

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# NO. 75-4018

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PLS

## United States Court of Appeals FOR THE SECOND CIRCUIT

No. 75-4018

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

MARTIN A. GLEASON, INC. AND GUTTERMAN FUNERAL HOME, INC.,

*Respondents.*

No. 75-4045

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

v.

LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

*Respondent.*

No. 75-4047

J.N. GARLICK FUNERAL HOMES, INC. AND MARTIN A. GLEASON, INC.,

*Petitioner,*

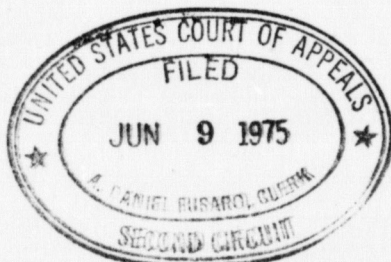
v.

NATIONAL LABOR RELATIONS BOARD AND LOCAL 100,  
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

*Respondents.*

On Application for Enforcement and Petition for Review of Two Orders of  
The National Labor Relations Board

### APPENDIX



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Washington, D.C. 20570

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APPENDIX

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
WASHINGTON, D. C.

-----X  
In the Matter of:

MARTIN A. GLEASON, INC.

and

GUTTERMAN FUNERAL HOME, INC.

and

WALTER B. COOKE, INC.

and

LOCAL 100 SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO  
-----X

Case Nos.  
29-CA-3602,  
3604, 3605

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

In the Matter of:

Martin A. Gleason, Inc. &  
Gutterman Funeral Home, Inc.

Case Nos.: 29-CA-3602, 29-CA-3604  
and 29-CA-3605

10.18.73	Charge filed in Case No. 29-CA-3602
10.18.73	Charge filed in Case No. 29-CA-3604
10.18.73	Charge filed in Case No. 29-CA-3605

- 1.31.74 Order Consolidating Cases, Complaint, Notice of Pre-Hearing Conference, and Notice of Hearing, dated.
- 2.12.74 Respondents' Motion for Severance, for Bill of Particulars, and for Extension of Time to File Answer, received.
- 2.12.74 Walter B. Cooke, Inc.'s Motion for Severance, for Bill of Particulars, and for Extension of Time to File Answer, received.
- 2.19.74 General Counsel's Opposition to Motions to Sever and Reply in Part and Opposition in Part to Demands for Bills of Particular, dated.
- 2.20.74 Order Extending Time to Answer, dated.
- 2.20.74 General Counsel's telegraphic message advising parties that he will move to amend the consolidated complaint on the opening of the hearing, dated.
- 2.22.74 Respondent Martin A. Gleason, Inc.'s Answer, received.
- 2.22.74 Walter B. Cooke, Inc.'s Answer, received.
- 2.22.74 Respondent Gutterman Funeral Home, Inc.'s Answer, received.
- 2.22.74 Respondents' Motion to Extend Date of Hearing, received.
- 2.22.74 Regional Director's Order, dated.
- 2.25.74 Order Rescheduling Hearing, dated.
- 2.26.74 Board's telegraphic message advising that rulings on Respondents' Motions are deferred to the pre-trial proceedings, dated.
- 2.27.74 Chief Administrative Law Judge's telegraphic message denying Respondents motion for severance, and



denying in part and granting in part Respondent's motion for bill of particulars, dated.

- 3.4.74 Respondents' Appeal from Order Denying Motions for Severance and for Bill of Particulars, dated.
- 3.12.74 Board's telegraphic message denying Respondents' appeal from order denying in part motion for bill of particulars and denying motion for severance, dated.
- 3.19.74 Order Rescheduling Hearing, dated.
- 4.30.74 Hearing opened.
5. 6.74 Hearing closed.
- 6.10.74 Respondents' letter stating that Charging Party's brief was untimely and should not be considered, dated.
- 7.30.74 Administrative Law Judge's decision issued.
9. 6.74 Respondents' Exceptions to Administrative Law Judge's Decision received.
9. 9.74 Charging Party's Exceptions to Decision and Order of Administrative Law Judge, received.
9. 9.74 General Counsel's Exceptions to the Decision of the Administrative Law Judge, received.
- 9.19.74 Walter B. Cooke, Inc.'s request for oral argument, dated.
- 9.23.74 Walter B. Cooke, Inc., 's Cross-Exceptions to Decision of the Administrative Law Judge, received.
12. 6.74 Decision and Order issued by the National Labor Relations Board.
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[Dated 7/30/74]

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## DECISION

### Statement of the Case

IRVING M. HERMAN, Administrative Law Judge: This consolidated case was tried before me on April 30 and May 1, 2 and 6, 1974, at Brooklyn, New York. The charges were filed by Local 100, Service Employees International Union, AFL-CIO (herein called the Union) on October 18, 1973,<sup>1/</sup> and duly served upon Respondents.<sup>2/</sup> The primary issues are whether Respondents violated Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151 et seq.), herein called the Act, by locking out their funeral directors; conditioning the latters' return to work upon their resignation from the Union; and, in No. 3602, requesting employees to furnish copies of statements given in the course of the investigation.<sup>3/</sup>

<sup>1/</sup> All dates herein are in 1973 unless otherwise specified.

<sup>2/</sup> The consolidation was pursuant to order of the Regional Director dated January 25, 1974; Respondent's motions for severance was denied by the Chief Administrative Law Judge whose ruling was sustained on appeal to the Board on March 12, 1974.

<sup>3/</sup> The last issue was tendered by an amendment to the complaint at the hearing pursuant to notice of motion served February 20, 1974. Respondent objected on the ground that it had not been given an opportunity to address itself to the allegation by way of a response to the facts obtained by General Counsel through an ex parte investigation. Quite apart from whether a departure

Upon the entire record,<sup>4/</sup> including my observation of the witnesses, and after due consideration of the briefs filed on behalf of the General Counsel and Respondent,<sup>4/</sup> I make the following:

3/ (Continued)

from the usual practice (pursuant to the Board's Rules) of affording such an opportunity ever forecloses proof of an allegation timely made in a complaint, Respondent here was put on notice over 2 months before the hearing that such amendment would be offered. It thus had ample time to attempt to convince General Counsel that the allegation lacked merit. I accordingly allowed the amendment.

<u>Page</u>	<u>Line</u>	<u>From</u>	<u>To</u>
250	13-14	acknowledging a violation based on 9 E and F. Independently	alleging a violation based on 9 (e) and (f) independently
252	15	acknowledging	alleging
252	19	violation. And sent	violation absent
266	12	he	I
294	23	Martin	John

4/ Sharing the view expressed in Respondents' brief (p. 12) that the transcript of testimony herein "is a travesty of court reporting," but noting, as the parties evidently do, that complete reconstruction of the record is neither possible nor necessary, I nevertheless believe some correction to be essential for sufficient understanding, and accordingly hereby order the following changes based on my notes and recollection as well as the context:

<u>Page</u>	<u>Line</u>	<u>From</u>	<u>To</u>
19	13	they	he
57	6	is Regional	is Assistant to the Regional
74	7	Benton	Gleason
82	21	will pursue	will not pursue
102	3	Benson	Gleason
188	25	he had to do	we had to do
194	16	fired	fined
232	21,22	Sr.	Jr.
233	16	so	do
248	9	indicated	resting
248	17	directly	directly related
248	20	are not saying	are saying (Continued)



## Findings and Conclusions

### I. Respondent's Business

The complaint alleges, the respective answers admit, and I find that Respondents are New York corporations engaged in New York, New York, in the retail sale of funeral services and related products, that they each derived gross revenues therefrom in the past year in excess of \$500,000, and each purchased and had delivered from other states to its places of business in New York goods and materials valued in excess of \$50,000, and that each is an employer engaged in commerce within the meaning of Section 2 (2), and (6) and (7) of the Act.

### II. The Labor Organization Involved

The complaint alleges, the answers admit, and I find that the Union is a labor organization within the meaning of Section 2 (5) of the Act.

### III. The Unfair Labor Practices

#### A. The Facts

##### 1. Background

For the 3-year period ending October 9, 1973, Respondents were parties to a collective-bargaining agreement with the Union covering all licensed funeral directors in the multiemployer unit comprising the Labor Relations Division of the Metropolitan

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#### 4/ (Continued)

All briefs were due in Washington by June 3, 1974. Charging Party's brief was not received until June 7. Upon Respondent's protest, and absent any explanation for such untimely filing, Charging Party's brief has not been considered in arriving at my decision.

Funeral Directors Association, Inc. (herein called the Association.<sup>5/</sup> In July 1973, and prior to the commencement of bargaining for a new contract, Respondent Walter B. Cooke, Inc. (herein called Cooke), withdrew from the Labor Relations Division (while retaining membership in the Association) and informed the Union of its intention to negotiate separately for a new contract.<sup>6/</sup> Thereafter the Labor Relations Division and Cooke each negotiated separately with the Union but they were unable to reach agreement.

On October 12, the Union called a strike against three members of the Labor Relations Division other than Respondents Martin A. Gleason, Inc., and Gutterman Funeral Home, Inc. (herein called Gleason and Gutterman, respectively). Beginning in July a strike fund had been established by the Union through a \$15 per week assessment on each unit employee as long as he remained at work during the negotiations. The Labor Relations Division members agreed that they did not want to support a strike against fellow members but left to each member the decision whether to lock out its employees as a countermeasure. Eighteen Division members (involving 45 establishments) locked out all their unit employees; 14 did not. Cooke also locked out all of its funeral directors at its 10 branches.

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<sup>5/</sup> The bargaining relationship long antedated that contract, the uncontradicted testimony of one employee of Respondent Gleason indicating the existence of a union shop as far back as 1961.

<sup>6/</sup> Other Association members also bargain directly with the Union rather than through the Labor Relations Division.



The Union and the Labor Relations Division reached agreement on December 12. The entire Union membership, including Cooke's employees, evidently participated in the ratification vote, and as a result of such ratification, all the locked-out employees, including Cooke's, returned to work.<sup>7/</sup>

We turn now to the facts relating to the lockouts by Gleason, Gutterman and Cooke.

## 2. Gleason

### (a) The lockout

On October 13, John Gleason (herein sometimes called Gleason), president of Gleason, informed Albert Philipps, Robert Gallagher and Frank Connelly, Sr., that the Union had struck three members of the multiemployer unit as the result of an impasse in the negotiations, that a strike against one member of the group as a strike against all, that solidarity required the other employers in the unit to counter with a lockout of Union members as a defensive measure for "the duration of the strike," and that as of the close of business that day all of its employees who belonged to the Union were suspended.<sup>8/</sup> Gallagher said he did not

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<sup>7/</sup> At least one Cooke employee who was on the Union's bargaining committee in the direct negotiations with Cooke also participated on the Union's multiemployer bargaining committee.

<sup>8/</sup> Gleason then employed four funeral directors, all of whom belonged to the Union and were in the bargaining unit. The fourth such employee, Frank Connelly, Jr., was not working that day but got the message from his father that evening, and John Gleason likewise informed him by telephone the following day.

wish to be put out of work and asked what his alternatives were, and whether there was anything he could do to continue working. Connelly testified that Gleason replied that since the contract had expired the men were no longer under any obligation to the Union and if they resigned they would be accepted back to work, and that in order to resign they would have to notify the Union by phone or telegram;<sup>9/</sup> that Connelly asked whether they would be able to rejoin the Union if a contract were subsequently reached, and Gleason said that the Union would have to readmit them so that at most it would cost them a new initiation fee and they could not be fined or otherwise discriminated against;<sup>10/</sup> and that Gleason told them to think about it and let him know their decision, and whichever way it went there would be no hard feelings.

According to Gleason, Gallagher and Philipps, Gleason's response in substance to Gallagher's question about alternatives at that meeting was that he could not discuss that with them.<sup>11/</sup>

<sup>9/</sup> Respondent's brief (p. 13) misreads this testimony as hearsay. Although the transcript says "they stated that Mr. John Gleason stated," the word "they" should read "he" (n. 4, supra), and "he" refers to John Gleason, the witness simply having reidentified the speaker by name in lieu of the pronoun. A dash between "that" and "Mr." would have reflected the testimony more accurately. Any other reading of this makes no sense.

<sup>10/</sup> Gallagher recalled that Connelly had asked questions but could not recall their substance.

<sup>11/</sup> General Counsel's brief (pp. 5-6) gives too literal a reading to the testimony on this point by urging a distinction between Gleason's version that he could not tell the men what to do and Philipps' that Gleason gave "no responses....He could not discuss it with us," and by attempting to distinguish both versions from Gallagher's that Gleason said he could not comment beyond his prepared text. Essentially their testimony is consistent that Gleason expressed an inhibition stemming from the Act.



Gleason, on cross-examination by his own counsel after being called as a witness under Section 43 (b) of the Federal Rules of Civil Procedure, categorically denied that he had made any reference at the meeting to resignation from the Union. He twice testified, however, that he "believe [d]" Gallagher had mentioned resignation and that he "continuously" replied that it was not his province to tell the men what to do. Gallagher, who followed Gleason to the stand, testified in this connection as follows:

Q: Did Mr. Gleason make any comment at that meeting with regard to the option employees had to resign from the Union?

A: No. He refused to comment on anything relating to that at all. Or relating to anything beyond what he had on a prepared text--sheet of paper.

Phillips, the next witness, testified:

Q: At any time did Mr. Gleason mention the word resigned or resignation from the union during that meeting?

A: No, sir, he did not.

Q: At any time during that meeting did the subject of sending telegrams of resignation to the union come up?

A: No, sir.

After a brief recess upon the conclusion of Phillips' testimony, Gleason was recalled to the stand for direct examination by his counsel, which began:

Q: (By Mr. Galloway) Mr. Gleason, since we don't have a transcript of your earlier testimony I will try to avoid repetition. With regard to that meeting of the 13th did

you or anybody else in that meeting raise the question of resignations and/or sending of telegrams to the union?

A: Absolutely not.

Further along in this examination Gleason was asked by his attorney whether he had had "any motivation for locking out [his] employees other than the one [he had] testified about earlier."<sup>12/</sup> and he answered:

A: You know, come to think of it, my mind is a little more refreshed in that regard, we were motivated to lock out the employees first in support of our members. And then also to bring an economic pressure upon the union in that regard.

However, Gleason talked with Gallagher and with Philipps on the telephone later that day according to the three of them. Gallagher again said he wanted to continue working, to which Gleason repeated that he could not talk about it at that time. Gallagher then said that he disagreed with the Union's stand and wanted to get out of the Union. Gleason replied, according to his testimony, "you know, you can't tell me that--I can't tell you what to do. When-whatever you do is within your own province. But I can't tell you what to do," and only when Gallagher insisted that he "had made up his mind" did Gleason discuss the details

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<sup>12/</sup> "[T]he one [he had] testified about earlier" was the defensive counteraction, the only motive he had mentioned at the October 13 meeting, according to the testimony of all witnesses.



of resignation which required Gallagher's sending a telegram to the Union and furnishing a copy to Gleason as proof. Gallagher testified that Gleason's immediate reply to his statement that he would quit the Union was, "as long as you brought it up, I can speak about it, if you don't want to belong to the union, he says, if you want to sever your membership in the union, he says, you can report to work"; and that Gallagher would have to bring a copy of the resignation he sent the Union as proof thereof. Gallagher dispatched a telegram of resignation to the Union on October 15 and gave a copy to Gleason who placed it in Gallagher's personnel file. Gallagher returned to work either the same day or the next day.

On the evening of the 13th, Gleason and Philipps testified, Philipps telephoned Gleason.<sup>13/</sup> Gleason testified to that call as follows:

A: He said to me, he said I want to return to work.  
And he said I want to resign from the union. I  
said I can't tell you to do that.

Q: And what did he then say?

A: Well, he said I want to resign. He said and I want  
to return to work. I said to him again, I said I can't  
tell you to resign from the union. Whatever you do is  
within your own province.

Q: And did he then make any proposals about resigning from  
the union to you?

A: He said I am going to resign. He said my wife and  
I have talked it over and I have decided to resign.  
I said whatever you do, you do by yourself. That's

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<sup>13/</sup> Philipps was then the Union's shop steward.

within your own province to do whatever you do.

Q: Do you recall when -- whatever he asked you what would happen if he sent a telegram to the union resigning his membership?

A: No. He would ask me what would happen if he sent a telegram? Not in wording like that.

Q: Did you give a statement to an agent of the National Labor Relations Board?

A: Yes, I did. Mr. Joel Hoffman, I believe it was.

\* \* \*

Q: I call your attention to page four of this affidavit. With regard to the bottom paragraph, I ask you if you would read that to yourself.

A: Yes, That's substantially correct.

Q: Does that refresh your recollection of whether Mr. Philipps asked you -- well, does that refresh your recollection as to what Mr. Philipps asked you?

A: Yes.

Q: Will you tell us what did he ask you at that point?

A: Will you allow me to return to work?

Q: And what was your response?

A: I can't tell you what to do.

Q: And then as you now recall the conversation would you tell us what he said?

A: What would happen if he sent a telegram to the union resigning his membership. And I said you would have to show me a copy of your resignation, whichever way you handle it. He then said he would send a telegram.



Q: This was the conversation -- this was the context of a conversation about him returning to work?

MR. GALLAY: Objection.

JUDGE HERMAN: Overruled.

A: The context of a conversation about his returning to work.

Q: This was what the conversation was about, why he called you?

A: He called me to tell me he was resigning from the union.

Q: Wasn't the first thing he said -- he asked you whether he could return to work?

A: He asked me if he could return to work. I answered to him, I said I can't tell you what to do. No, I can't tell you to do that.

Q: I am a little confused. You said you can't tell him what to do?

A: He said also in that statement, I will resign from the union. I said I can't tell you to do that.

Q: But Mr. Gleason, you state now that -- and you stated in the affidavit -- that you can't tell him what to do. At this point did he have any alternatives as far as you are concerned. Was he not locked out?

MR. GALLAY: Objection. Argumentative?

JUDGE HERMAN: Overruled. Answer the question.

A: He was locked out.

Q: So in effect he had no alternatives at that point, did he?

MR. GALLAY: Objection.

JUDGE HERMAN: Overruled.

A: He had no alternatives to what?

Q: As far as returning to work?

A: He was locked out.

Q: After this conversation did Mr. Philipps then come in to see you?

JUDGE HERMAN: Before you get to that, let's get a little more on this telegram. So he was locked out, and how did the discussion of the telegram get into the conversation?

A: I'll have to refresh my memory on that and look in here again. He said what would happen if he sent a telegram to the union resigning his membership.

JUDGE HERMAN: What was your reply?

A: I said you would have to show me a copy of your resignation, whichever way you handle this, --

JUDGE HERMAN: He would have to show you a copy for what purpose?

A: Well, he would have to show me a copy to establish the fact that he did resign.

JUDGE HERMAN: For what purpose?

A: Because there was a lockout, and there was a strike on unions party against the bargaining unit of the Metropolitan Funeral Directors Association.

JUDGE HERMAN: What would his resignation from the union accomplish?

A: Well, the telegram would be indicative of the fact that if there was any reprisals and so forth he would be protected against those reprisals or fines.



JUDGE HERMAN: What would you have to do with that?

A: I wouldn't have to do anything with that.

JUDGE HERMAN: What did you have -- I mean when you say he would have to show you the telegram for what purpose?

A: He would have to show me the telegram that he resigned from the union.

JUDGE HERMAN: Why was it -- why did you want to know if he resigned?

A: Well, because why should I let him back to work.

JUDGE HERMAN: You mean the resignation had something to do with his coming back to work?

A: The resignation had something to do with his coming back to work, no. I said -- if he wanted to resign from the union, that was within his own province. That was not for me to influence him to do this. This was something that he wanted to do, but I wouldn't accept him back unless he showed me a telegram.

Philipps described the conversation thus on direct examination:

And I called him up, and I asked him, I said I would like to go back to work. He said well, do you know what you have to do?

I said yes, I do. I believe I have to sever myself from Local 100. I was scheduled to come in to work the following morning, Sunday morning at nine o'clock.

And I told him that I would be in the next morning, and when I got there I would send a telegram to the Local 100, and sever myself from the union in formal manner.

On cross, he testified as follows:

Q: You stated to him that you would like to go back to work; is that correct?

A: I did.

Q: And you said that his response was do you know what you have to do?

A: No. He said you know what you have to do. Put it in a question form, you know what you have to do? And I said yes, I did.

\* \* \*

Q: So that when you -- when Mr. Gleason said to you do you know what you have to do or you know what you have to do, question mark, was there any particular backdoor statement that they gave you this knowledge of what to do.

A: No. No. I just told him I believe I think I know what I have to do.

Q: And then what was said at this point? What was his -- you then said, I believe you stated on direct, you said I believe I have to sever myself from Local 100?

A: Yes

Q: What was his response to that?

A: He said all right, you come in to work tomorrow morning, nine o'clock and you can send the telegram then.

Q: Had you suggested the telegram or was that the --

A: No. I suggested the telegram.

Philipps sent his telegram of resignation to the Union the following day (the 14th). He then reported for work with a receipt from Western Union. Gleason at first refused to accept anything less



than a copy of the wire as a condition of his return to work but ultimately settled for a certification by Philipps of its contents and a certification from Western Union that the wire had been sent.

Frank Connelly, Jr., the unit employee who had not been at the October 13 meeting but who had been advised of the lockout by Gleason's phone call on the 14th, talked with Gleason again on the phone on the morning of the 15th and arranged a meeting for that afternoon with Benson, a Union official. In the course of that phone conversation, according to Connelly's undenied testimony, he asked Gleason what alternative he had to being locked out, and Gleason replied that the only thing he could do would be to resign from the Union, and to Connelly's questions to what would happen to him if he resigned, Gleason answered that he would not suffer because any contract thereafter concluded would contain a no-recrimination clause.

The two Connelly's later went to Gleason's office where they waited a considerable time until Benson arrived. Connelly, Jr., initially testified that while they were waiting they discussed the situation and he asked if they could resolve the matter without resigning from the Union, but he soon admitted that he could not recall whether he had raised that question on that particular occasion, and his father made no mention of that matter in his testimony concerning the period prior to Benson's arrival. After Benson joined them, according to Connelly, Jr.,

Q: Do you recall what was said at that time, that meeting?

A: Yes, let me think.

At that time we were discussing the possibilities of going back to work other than resignation from the

union and Mr. Benson was trying to, you know, find a solution as I am sure Mr. Gleason was at the time.

I asked Mr. Gleason if it would be possible for -- wait a minute now, I had told Mr. Benson beforehand, he told us our only alternative was resignation from the union.

I believe Mr. Benson told him that that would be impossible for us to do.

Wait a minute, I'm sorry, I didn't say that Mr. Benson--I'm getting very confused, I'm sorry.

The event are very vague to me, I'm trying my best to recall exactly what happened.

After refreshing his recollection, still on direct examination, by reading the affidavit he had given to the Board agent during the investigation, he added that he did ask Gleason at that time whether there were alternatives to resignation and Gleason responded negatively, saying that if he did not resign he could not work.

On cross, his testimony of the conversation in Gleason's office prior to Benson's appearance was as follows:

A: We discussed this, we discussed the whole negotiations as a whole, you know, what problems were holding the thing up.

This was the thing it was just a general discussion on the negotiations and of course, you know, we were trying to get ourselves back to work.

That was the, you know, the point to the, what the point to the whole thing was.



Q: Now you were looking for alternatives to being locked out?

A: Right.

\* \* \*

Q: Was there anything else in that conversation?

A: Not that I recall at the moment.

Q: You testified earlier that your wife was pregnant and you were concerned about benefits, is that correct?

A: Yes.

I asked -- yes, I believe now that you bring it up that at that time this was part of the conversation also. What if we were to resign, what in effect would happen to us, would we lose our benefits, our pension rights or whatever?

Whatever fringe benefits were offered to us by the union, that was all part of the conversation.

Q: You asked Mr. Gleason that question?

A: Yes.

Q: At anytime during that conversation did Mr. Gleason suggest to you that you resign?

A: Well, he during the conversation itself, yes, he said well in effect what he said was if you resign I will protect you, I will not sign a contract without a no recrimination clause.

Q: Did he aske you to resign or did he give you it as an alternative after you raised it he then told you what the facts of life were after you raised the question?

A: Yes.

Q: That's what you asked for the meeting for, wasn't it?

A: Yes.

Q: But he never advised you to resign?

A: It depends -- I guess not.

Q: He never asked you to resign?

A: No, it was more an alternative.

Following Benson's arrival, according to Connelly, Jr., they talked about the possibility of resigning, and Benson said the Union would not accept their resignations during the negotiations and that in the past people had been disciplined by the Union therefor; and that Gleason repeated his position that he would not sign a contract without a no-recrimination clause.<sup>14/</sup>

Connelly, Sr., was unable to recall on direct examination, any reference to the Union in his account of the October 15 meeting, recalling only that Benson asked that the lockout be terminated and Gleason replied that it could not because a strike against one employer was a strike against all. But on cross he testified that after Connelly's assertion of the principle of solidarity "there was discussion about what could happen later on," including whether "there would be any penalties assessed;" that Gleason said that the employees could return to work only if they resigned from the Union, which, he asserted, they were free to do because the contract had expired; and that Benson took the position that they were still bound to remain members and abide by the Union's rules, and that fining returning workers was "a possibility."

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<sup>14/</sup> Connelly, Jr., conceded that he had falsely stated in a prior affidavit he gave the Company that Gleason had not commented at that time on Benson's statement.



He could not recall whether his son said anything during the meeting. He also testified, after having denied the possibility that any of the comments he had placed at the meeting of the 13th had actually been made on the 15th, that "I could possibly transpose both meetings together. I am not that positive on it."

Respondent offered no evidence regarding either Gleason's phone conversation with Connelly, Jr., on the 15th or any of Gleason's conversations that day with the Connellys or Benson.

(b) Gleason's requests for the  
investigative statements

Shortly after the issuance of the complaint herein, Gleason asked his employees if they would mind supplying copies of the statements they had given the Board agent during the investigation. He indicated he was not requiring them to do so. Each readily complied after obtaining a copy from the Regional Office.<sup>15/</sup>

3. Gutterman

At about 12:30 - 1 a.m. on the morning of October 14, shortly after returning to Gutterman's Manhattan location after completing the removal of a corpse, Frank Marinaro and August Tolomie<sup>16/</sup> were informed by Michael Gutterman (herein

<sup>15/</sup> The sole indication of hesitancy on the part of any employee in this connection was the following statement by Connelly, Sr., in his request to the Regional Office:

I am doing this at the request of my employer. I would like to ask you if this will jeopardize my position in this matter. I don't believe that it will but I want to be sure. If you consider this hazardous please advise me.

<sup>16/</sup> Marinaro was senior shop steward and a picket captain as well as on the Union's negotiating team; he and Tolomie were "the most conscientious picketers during the lockout."

sometimes called Gutterman), secretary of Gutterman, that "no members of the local can continue to work," or that "no members of local 100 would be allowed to work."<sup>17/</sup> He told them that this was at the direction of the Labor Relations Division's negotiating committee, and was akin to the strike action taken 3 years previously by all the employees. Gutterman expressed the hope that there would be no hard feelings and accepted Marinaro's offer to notify Gutterman's other unit employees. Gutterman denied that there was any mention by anyone of resignation from the Union. Marinaro and Tolomie testified, however, that Gutterman did tell them that on advice of counsel, if they wanted to return to work they would have to notify the Union of their resignation in writing,<sup>18/</sup> and that they "would rejoin the union" after the settlement of the dispute; that Marinaro asked if Gutterman would compensate them for any fine imposed by the Union, and Gutterman replied that there would be no fine. Tolomie testified he reported this conversation to the Union the next day but Marinaro testified he (Marinaro) did not report it until about a week later. None of the employees resigned.

#### 4. Cooke

Carlo Bonura, who was a member of the Union's bargaining committee, was officially informed of the lockout on Sunday, October

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<sup>17/</sup> Gutterman denied using the word "lockout," insisting he said "defensive counteraction." Marinaro could recall no term other than "lockout" and specifically could not recall "defensive counteraction." Tolomie testified Gutterman said they were "put...out on the street" or "put...out of the building"; he could recall the use of no other term, and specifically "defensive counteraction," denied the term "lockout" was used, and testified that Gutterman (continued)



14, by Manager Adams and Assistant Manager Montimurro<sup>19/</sup> of the Parkchester branch where he worked. On direct examination, he testified that they said that "the employees belonging to [the] Union" were not to report to work and that they regretted this decision but could do nothing about it and hoped that there would be no hard feelings. On cross, he did not mention the Union in describing this conversation but said he was told that "none of the licensed men" would be working from then on.

Bonura was a picket captain and may have started picketing that day, but his first full tour of picket duty ran from midnight of October 14 to 8 a.m. on the 15th. At around 8 a.m. of that day, according to his direct testimony, in front of the entrance, Montimurro told him that if he quit the Union he could come back to work. On cross, after having brought to his attention the affidavit he gave during the investigation, he placed the incident in the afternoon of the 15th. Bonura also testified that Montimurro made a similar statement to him at the same location on October 26 while another very active picket, Roger Davis, was only a foot or two away. Davis corroborated this testimony. According to both of them, Montimurro initiated the statements, although Bonura admitted in answering a specific

17/ (Continued)

either shrugged his shoulders when Marinaro asked if it was lockout or specifically denied that it was a lockout.

18/ By letter, according to Marinaro. Tolomie said Gutterman had specified letter or telegram and required notification to the Association as well.

19/ Cooke employs about 30 assistant managers overall. In the negotiations the Union took the position that none of them were supervisors.

question on cross, that he (Bonura) might first have mentioned that there had been resignations at other funeral establishments. Montimurro testified that the subject arose on just one occasion, within a week or two after the lockout, when employee Cardinale asked him after telegraphing their resignations from the Union, and he replied in the presence of Bonura and Davis that "I guess you guys can do the same thing. I'm not telling you to do this. You can come back any time you want to. You must let your conscience be your guide." Montimurro, however, denied the statements as attributed to him by Bonura and Davis, specifically denied that he "mentioned 'quit the union' per se," and testified that he had received no instructions from his superiors as to what to say about the lockout. None of the employees resigned.

Bonura admitted that his attempts to uncover similar statements by Montimurro to other employees proved unsuccessful. Pickets entered the Company's premises at times during the lockout to use the toilet facilities and for other reasons, and engaged in conversations with many assistant managers and other corporate officials.

#### B. Concluding findings

##### 1. Factual conclusions

##### a. Gleason

The foregoing recital shows that at the very least, Gleason conditioned a return to work during the strike upon its employees' resignation from the Union,<sup>20/</sup> albeit upon the suggestion

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<sup>20/</sup> That resignation was indeed a condition of return, even on Gleason's evidence, is demonstrated by its firm insistence on proof thereof, especially in Philipps' case.



of the employees themselves and with the understanding that the employees would rejoin the Union thereafter. As I indicate below, it therefore becomes unnecessary to resolve the testimonial conflicts between General Counsel's and Gleason's witnesses.

b. Cooke

Nor is there a need to resolve any testimonial differences between Montimurro and General Counsel's witnesses in view of Montimurro's admission that in response to an employee's question, in the presence of other employees, as to whether he had heard of locked-out employees at another company returning to work after telegraphing their resignations from the Union, he stated, "I guess you guys can do the same thing. I'm not telling you to do this. You can come back any time you want to. You must let your conscience be your guide." This meant the employees could return any time they resigned from the Union -- and not until then. <sup>21/</sup>

c. Gutterman

Although Michael Gutterman denied making any statement concerning the employees' return to work, he did testify to having told his employees, in announcing the lockout, that "no members of the local" could continue to work. While perhaps more subtle

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<sup>21/</sup> I do not credit Bonura's testimony on direct examination that when the lockout was announced he was told that it applied to "the employees belonging to [the] Union," in view of his failure to mention the Union on cross and restating the announcement so as to confine its application to "the licensed men."

than a direct invitation to quit the Union, the statement's plain import was that non-members of the Union could work. Hence the Company's contention that the reference to members is not significant because all unit employees were union members is less than compelling. If non-members could work, resignation was the remedy. In view of this message, no credibility determinations are needed here either.

## 2. Legal Analysis <sup>22/</sup>

The principal precise question posed here is whether employers who are part of a multi-employer bargaining unit may lock out their employees to avoid being whipsawed during contract negotiations and condition their return to work for the duration of the strike upon their resignation from the labor organization representing them in the bargaining. The General Counsel never quite faces up to this issue but rather treats the case in a more or less perfunctory manner befitting the usual situation where employees suffer coercion related to union activity. Thus he tersely urges the statements that the employees could return to their jobs if they resign from the Union as boilerplate 8 (a) (1) violations wholly independent of the nature and legal posture of the employees' status at the time, and fails to consider the relation between such statements and the possibility that he may not prevail on his major contention as to the illegality of the lockouts. <sup>23/</sup> Indeed the conclusion that there

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<sup>22/</sup> Crystallization of the issues at the hearing, and as reflected in the briefs, has mooted Respondent's motions to dismiss certain allegations of the complaint on which I had reserved decision.

<sup>23/</sup> The General Counsel sees no violation in any of the lockouts per se.



has been an 8 (a) (1) violation becomes a bootstrap for the alleged 8 (a) (3). This is putting the cart before the horse because it fails to meet Respondent's contention that their <sup>24/</sup> conduct here, even on the General Counsel's facts, constitutes only another privileged consequence of Buffalo Linen. <sup>25/</sup> It is necessary to keep in mind that unlike the ordinary situation where an employer is not free to base hiring or layoff on union activity, the employers here would have been free to lock out their Union employees (all their employees in the unit) and replace them with nonunion personnel for the duration of the strike. N.L.R.B. v. Brown, 380 U.S. 278, 286, 288, 297. <sup>26/</sup> The narrow legal issue, as I view it, is whether conditioning the employees' return on their resignation from the Union is a valid alternative to the Brown power of replacement. As a matter of pure logic, it might appear so. If an employer may properly refuse to retain his employees and use "temporary nonunion [strangers] in preference to the locked out union members" (Brown, 380 U.S. at 288), he might logically -- perhaps a fortiori -- be able to recall the locked-out employees when they satisfy the same non-union condition. stated differently, since the employees' union status would warrant their continued exclusion from their jobs for the duration of the strike, logic would seem to permit the employer to condition their return, while the strike lasts,

<sup>24/</sup> The applicability of this to Cooke is discussed infra.

<sup>25/</sup> N. L. R. B. v. Truck Drivers Union, 353 U.S. 87.

<sup>26/</sup> The case in respect to the statements may thus more closely resemble a threat of discharge under a valid union security clause although the analogy is of course not entirely apt since the latter involved a duty as well as a power and since the separation of the employee there is permanent.

on their shedding that status.

Resolution of the issue, however, involves further considerations.<sup>27/</sup> "The ultimate problem is the balancing of the conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility...." Buffalo Linen, 353 U.S. at 96. The propriety of preferring nonunion personnel as replacements was justified in Brown not because it was not discriminatory -- the Court held it was -- but only because "any resulting tendency to discourage union membership [was] comparatively remote,<sup>28/</sup> and that this use of temporary personnel constitute[d] a measure reasonably adapted to the effectuation of a legitimate business end." Brown, 380 U.S. at 288.

The instant cases are distinguishable, in my opinion. The tendency to discourage union membership is certainly less "remote" where resignation from the union, even just for the duration of the strike, becomes the price for keeping one's job during that period. In addition to the direct and immediate effect of such resignations, other natural and foreseeable consequences thereof may reasonably be expected to survive the end of the strike. Whereas the temporary hiring of strangers might well tend to solidify the Union's ranks both during and after the strike, the employees who resign are likely to return to the Union at the conclusion of

<sup>27/</sup> See Holmes, The Path of the Law, in Collected Legal Papers (Harcourt, Brace, 1920), 167, 180-181, expanding on his "the life of the law has not been logic; it has been experience," from The Common Law.

<sup>28/</sup> Respondent's reliance on the employees' Section 7 right to refrain from supporting the Union, including the right to resign, contributes nothing analytically. That right is present in every case (continued)



the strike<sup>29/</sup> with a diminished loyalty to the Union and with the stage set for internal dissension.<sup>30/</sup> That the employees were in fact quite concerned about possible recriminations is manifested generally by the references to fines in a prior strike (Respondent's brief, p. 7) and specifically as to Gleason (id. at 20): "both Mr. Gallagher and Mr. Philipps were well aware that they would have eventually to reestablish themselves with Local 100 and bear the ire of that organization for resigning and working during the lockout; particularly Mr. Philipps who had been the Shop Steward." Of at least equal importance is the fact that John Gleason, like the other Association members, was aware of this concern and its background.

If these circumstances do not render the conduct "so inherently destructive of employee interests [that it] could not be saved from illegality by an asserted overriding business purpose pursued in good faith" (Brown at 287), they at least undermine any contention that the conduct was "reasonably adapted" to the effectuation of such a purpose (id. at 288). Employers should

<sup>28/</sup> (Continued)

under the Act. But it does not normally enable an employer to induce or encourage defection from a union, still less by conditioning job eligibility on withdrawal from the union.

<sup>29/</sup>

Assuming, as here, the existence of a union security clause.

<sup>30/</sup>

The 8 (a) (3) proscription of discouragement of membership encompasses discriminatory conduct designed to discourage "good" union membership "as well as adhesion to Union membership." Radio Officers' Union v. N.L.R.B., 347 U.S. 17, 39-40.

not be allowed to rely on the principle of solidarity to destroy or seriously weaken the solidarity of the union and jeopardize its future stability.<sup>31/</sup> As the dissenting Board members in Brown (who ultimately prevailed in the Supreme Court) were careful to observe, the temporary replacement of the employees did not affect their "union adherence." 137 NLRB 73, 77. And if the Court's observation there that "a union member would have nothing to gain, and much to lose, by quitting the Union" (380 U.S. at 289) is equally applicable here as to loss, it is somewhat less applicable as to gain in view of the continuing earnings specifically offered.

Even crediting Gleason's evidence that the offer followed Gallagher's and Philipps' announcements to John Gleason that they had decided to quit the Union provides small comfort to that company. If, as indicated above and as John Gleason believed, the company could not itself have sought the resignations by conditioning return thereon, it could not have accepted their tender by the employees as the price of return just as it could not have withheld a wage increase until its employees "volunteered" to forgo their support for a union, or just as it could not have discharged its employees for joining a union and rehired them when they "voluntarily" shredded their membership cards. Whether the price is demanded by the

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<sup>31/</sup> For this reason it is of slight moment that Respondents continued to bargain with the Union. A debilitated union becomes subject to decertification proceedings at an appropriate time and in any event a poor prospect for future bargaining if indeed it manages to remain a viable organization at all.



employer or offered by the employee who is being deprived of the particular benefit at stake, the effect is the same: The employer is using his control over the employment relationship as the lever for influencing the employee's exercise of his statutory right. The crucial question is whether the case fits Brown. If it does, the employer may use his control as he pleases; but if, as I believe, the requirement of resignation distinguishes the case from Brown, it does not matter whether the employer expressly and affirmatively solicits the resignation or merely grasps the opportunity extended by the employee, who, knowing resignation to be the only possible way of returning to work, <sup>32/</sup> himself proposes it. <sup>33/</sup>

The foregoing, except for the specific facts relating to Gleason, also applies to Gutterman, and applies as well to Montimurro's conceded statement in Cooke as to render that statement coercive, even according Cooke the full Buffalo Linen

<sup>32/</sup>

Philipps, whom I credit over Gleason, certainly "kn[e]w what [he had] to do," and said so when Gleason asked him. There was no evidence that he possessed ESP, but it would not have mattered if he had.

<sup>33/</sup>

I am not impressed by Gleason's argument (Brief, pp. 4, 44) that the statements and events relating to the return to work were (on its evidence) "after the fact" and cannot "create retroactively any improper motivation with regard to the decision to lock out." All the events occurred on the same day, and the entire matter had to be in John Gleason's mind at the earlier meeting when he announced the lockout and (again on Gleason's evidence) refused to answer questions about "alternatives," saying he could not discuss that. Cf. Wire Products Mfg. Corp., 198 NLRB No. 90, pp. 2-5.

privilege despite its withdrawal from the multiemployer unit. <sup>34/</sup>  
 And if Montimurro's conduct cannot find justification in Brown,  
 which recognized a privilege to continue operation of a plant  
 with temporary replacements during a defensive lockout in a  
 multiemployer unit, even less can it find support in American  
 Ship <sup>35/</sup> where, on the same day that the Court decided Brown,  
 it not only specifically reserved the question of the legality of  
 operating with replacements during an offensive lockout (380  
 U.S. at 308, n. 8), <sup>36/</sup> but also noted, "There is no claim

<sup>34/</sup> See Evening News Ass'n, 166 NLRB 219, 222, cited by Cooke,  
 holding a lockout valid on the basis of the Supreme Court's  
 decision in American Ship Building Co. v. N.L.R.B., 380  
 U.S. 300, superimposed on Buffalo Linen, where the res-  
 pondent employer, although not technically engaged in multi-  
 employer bargaining with the only other daily newspaper in  
 Detroit (which had been struck), was in direct competition  
 with the latter, was bargaining with the same union, was faced  
 with virtually identical bargaining demands concerning renewal  
 of contracts that had expired on the same date, and had itself  
 been threatened with a strike when the union suspended nego-  
 tiations. It is noteworthy, however, that the Board upheld the  
 lockout on the ground that "The interest of the News in using  
 economic pressure to implement its own bargaining motivation  
 on its own behalf."

<sup>35/</sup> Also urged as applicable to Cooke (Respondent's brief, p. 35).

<sup>36/</sup> See Inland Trucking Co. et al., d/b/a/ Oshkosh Ready-Mix  
 Co., 179 NLRB 350, enforced, 440 F. 2d 502 (C.A. 7),  
 certiorari denied, 404 U.S. 858; but see Inter-Collegiate Press,  
 199 NLRB No. 35, affirmed sub nom. Bookbinders Local No.  
 60 v. N.L.R.B., 486 F. 2d 837 (C.A. 8); Ottawa Silica Co.,  
 197 NLRB No. 53, affirmed, 482 F. 2d 945 (C.A. 6),  
 certiorari denied, 85 LRRM 2465.



that the employer locked out only union members, or locked out any employee simply because he was a union member; nor is it alleged that the employer conditioned rehiring upon resignation from the union." (id. at 312). I find that the imposition of the condition here, if attributable to Cooke, would supply the ingredient lacking in American Ship, i.e., "an intention to discourage union membership" (id. at 313). <sup>37/</sup>

<sup>37/</sup> I would reach the same conclusion in respect to Gleason and Gutterman if certain ambiguous remarks of Respondent's counsel (e.g., Brief, pp. 5, 6, 10, 41) required passing on an American Ship defense as to those companies. If such a contention is intended, however, despite the failure to advance it clearly, as it was advanced in the case of Cooke (Brief, p. 35), I would reject it as not grounded on the record. Both Gleason and Gutterman repeatedly testified to their having informed their employees that the lockouts were only defensive counteractions. And Gleason's testimony in this respect was corroborated by his witnesses, Gallagher and Philipps. The sole variance was Gleason's testimony when recalled to the stand after ample opportunity to consult with counsel about his earlier testimony, and in answer to the question whether he had had any other motive "than the one you have testified about earlier," he stated:

A: You know, come to think of it, my mind is a little more refreshed in that regard, we were motivated to lock out the employees first in support of our members And then also to bring an economic pressure upon the union in that regard.

I discredit this testimony as completely fabricated and entirely at odds with all the earlier testimony. And since there is no credible evidence that either Gleason or Gutterman entertained any motive other than the defensive counteraction, as explained to their employees they may not rely on any such motive now. Cf. N.L.R.B. v. Great Dane Trailers, Inc., 386 U.S. 26, 34-35.

However, I am unable to conclude that either the statement admitted by Montimurro or the statements attributed to him by the General Counsel suffice to establish an unlawful motive on the part of Cooke. Even though that company is liable for the coercive tendency of the statement or statements, the validity of its lockout must turn on its motive. <sup>38/</sup> And while Montimurro's statements constitute some evidence of that motive they are not sufficient, standing alone, to warrant such a finding. He was but 1 out of 30 assistant managers (whose supervisory status was challenged by the Union in the negotiations), serving at a single branch out of ten operated by the company. If the statements in question reflected company policy, it would be reasonable to expect that similar urgings would have emerged elsewhere, and possibly from a higher level of authority. Indeed I do not believe any order at all to be warranted against Cooke on the basis of the single statement or two made in these circumstances.

I accordingly conclude that Gleason and Gutterman violated Section 8 (a) (1) and (3), but that despite Cooke's violation of Section 8 (a) (1) through Montimurro's statement or statements, the complaint against Cooke should be dismissed.

(b) Gleason's requests for  
the Employees' Statements

Notwithstanding the voluntary character of Gleason's requests for the copies of the employees' statements and the willingness of the latter's compliance therewith, applicable Board law, supported

<sup>38/</sup>

As indicated supra, General Counsel does not attack the lockout except on the basis of Montimurro's alleged statements.



by respectable judicial authority, requires a finding that Gleason's conduct in this respect violated Section 8 (a) (1). E.g., Robertshaw Controls Co., 196 NLRB 449, 455-456, enforcement denied in this respect, 483 F. 2d 762, 766-770 (C.A. 4); Braswell Motor Freight Lines, 156 NLRB 671, 672, n. 1, 675; Texas Industries, Inc. v. N.L.R.B., 336 F. 2d 128, 133-134 (C.A. 5); Surprenant Manufacturing Co. v. N.L.R.B. 341 F. 2d 756, 762-763 (C.A. 6); Retail Clerks International Ass'n. v. N.L.R.B., 373 F. 2d 655 (C.A. D.C.).

#### Conclusions of Law

1. Respondents are employers engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. Gleason has violated Section 8 (a) (1) and (3) of the Act by locking out its licensed funeral directors and conditioning their return to work upon their resignation from the Union.

4. Gleason has violated Section 8 (a) (1) of the Act by requesting its employees for copies of statements they furnished the Board in the course of the investigation of the charge herein.

5. Gutterman has violated Section 8 (a) (1) and (3) of the Act by locking out its licensed funeral directors and conditioning their return to work upon their resignation from the Union.

6. Cooke has violated Section 8 (a) (1) by Montimurro's informing its locked-out employees that the only way they could return to work was by resigning from the Union.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

8. Cooke did not violate the Act by its lockout of its licensed funeral directors.

## Remedy

In order to remedy the unfair labor practices found herein, my recommended Order will require Respondents Gleason and Gutterman to cease and desist therefrom and from any like or related conduct. In order to effectuate the policies of the Act, my recommended Order will also require said Respondents to make their locked-out employees whole for any loss of earnings they may have suffered by reason of the discrimination against them by payment to each of them of a sum of money equal to that which he would have earned during the period in his lockout, less net earnings during such period, to be computed in the manner prescribed in Isis Plumbing & Heating Co., 132 NLRB 716. I shall also recommend the usual posting of notices by both of said Respondents.

Upon the foregoing findings of act and conclusions of law, and the entire record herein, and pursuant to Section 10 (c) of the Act, I hereby recommend the following: <sup>39/</sup>

## ORDER

A. Respondent Martin A. Gleason, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Informing any employee during a bargaining lockout that they will not be permitted to return to work for the duration of

<sup>39/</sup> In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.



the bargaining dispute unless they resign from Local 100, Service Employees International Union, AFL-CIO.

(b) Locking out its employees with the intention of barring their return to work for the duration of the bargaining dispute unless they resign from Local 100, Service Employees International Union, AFL-CIO.

(c) Asking its employees for copies of statements they furnished the Board in the course of the investigation of a charge.

(d) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make whole its locked-out employees for any loss of earnings they may have suffered by reason of the discrimination against them during the lockout period in the manner set forth in the section of this Decision entitled "Remedy."

(b) Post at its principal place of business at New York, New York, and at such other establishments as it may operate, copies of the attached notice marked "Appendix A." <sup>40/</sup> Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by an authorized repre-

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<sup>40/</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

sentative of Respondent Martin A. Gleason, Inc., shall be posted by said Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing, within 20 days from the date of this Order, what steps said Respondent has taken to comply herewith.

B. Respondent Gutterman Funeral Home Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Informing any employee during a bargaining lockout that they will not be permitted to return to work for the duration of the bargaining dispute unless they resign from Local 100, Service Employees International Union, AFL-CIO.

(b) Locking out its employees with the intention of barring their return to work for the duration of a bargaining dispute unless they resign from Local 100, Service Employees International Union, AFL-CIO.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make whole its locked-out employees for any loss of earnings they may have suffered by reason of the discrimination against them during the lockout period in the



manner set forth in the section of this Decision entitled "Remedy."

(b) Post at its principal place of business at New York, New York, and at such other establishments as it may operate, copies of the attached notice marked "Appendix B." <sup>41/</sup> Copies of said notice on forms provided by the Regional Director for Region 29, after being duly signed by an authorized representative of Respondent Gutterman Funeral Home, Inc., shall be posted by said Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by said Respondent to ensure that said notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director in writing, within 20 days from the date of this Order, what steps said Respondent has taken to comply herewith.

C. The complaint against Walter B. Cooke, Inc., (No. 3605) is dismissed.

Dated at Washington, D.C., July 30, 1974.

/s/ Irving M. Herman  
Administrative Law Judge

<sup>41/</sup> In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX  
NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT inform any of our employees during a bargaining  
lockout that they will not be permitted to return to work for the  
duration of the bargaining dispute unless they resign from local  
100, Service Employees International Union, AFL-CIO.

WE WILL NOT lock out our employees with the intention of  
barring their return to work for the duration of a bargaining  
dispute unless they resign from Local 100, Service Employees  
International Union, AFL-CIO.

WE WILL NOT ask our employees for copies of statements they  
furnished the Board during the investigation of a charge.

WE WILL NOT interfere in any similar manner with our  
employees' rights under Section 7 of the National Labor  
Relations Act.

WE WILL make whole our locked-out employees for any loss  
of earnings they may have suffered during the lockout period  
by reason of the discrimination against them.

MARTIN A. GLEASON, INC.  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

---



THIS IS AN OFFICIAL NOTICE  
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535).

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## APPENDIX

## NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT inform any of our employees during a bargaining lockout that they will not be permitted to return to work for the duration of the bargaining dispute unless they resign from local 100, Service Employees International Union, AFL-CIO.

WE WILL NOT lock out our employees with the intention of barring their return to work for the duration of a bargaining dispute unless they resign from Local 100, Service Employees International Union, AFL-CIO.

WE WILL NOT interfere in any similar manner with our employees' rights under Section 7 of the National Labor Relations Act.

WE WILL make whole our locked-out employees for any loss of earnings they may have suffered during the lockout period by reason of the discrimination against them.

GUTTERMAN FUNERAL HOME, INC.  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE  
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or



covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535)

---

[Dated 12/6/74]

\*

\*

\*

### DECISION AND ORDER

On July 30, 1974, Administrative Law Judge Irving M. Herman issued the attached Decision in this proceeding. Thereafter, the General Counsel, the Charging Party, and Respondents Gleason and Gutterman filed exceptions and supporting briefs, and Respondent Cooke and the General Counsel filed cross-exceptions and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1/</sup> and conclusions <sup>2/</sup> of the Administrative Law Judge and to adopt his recommended Order.

We agree with the Administrative Law Judge that Respondent violated Section 8 (a) (1) of the Act by requesting its

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<sup>1/</sup> As the record, exceptions, and briefs adequately present the issues and the positions of the parties, the Respondents' requests for oral argument are hereby denied.

<sup>2/</sup> Chairman Miller will not adopt the Administrative Law Judge's finding that Respondent Gleason violated Sec. 8 (a) (1) of the Act by requesting employees to furnish copies of statements given in the course of the Board's investigation of the charges against Gleason. Chairman Miller would find the requests lawful inasmuch as they were made after the complaint had issued as part of  
(Continued)



employees to provide it with copies of statements given by them to a Board agent. Contrary to our dissenting colleague, we find that the Respondent's conduct in the circumstances of this case would naturally inhibit its employees' desire to cooperate with the Board's investigative efforts and deter others from so cooperating. Backed by its economic power and in the context of other serious unfair labor practices, as in this case, an employer's request for statements given to the board may be interpreted by the affected employees as an order with NLRB No. 11, and cases cited therein. Our dissenting colleague's reliance on the court's decision in Robertshaw Controls Company, Lux Time Division, 483 F. 2d 762 (C.A. 4, 1972), is misplaced. There the court carefully distinguished a long line of Board and court cases supporting our position herein, pointing out that in Robertshaw the request for statements was in the context of very minor unfair practices, involving a small number of employees, and that there was no wholesale investigation by the Board of antiunion activities on the part of the company. The court concluded that the request in that case did not violate Section 8 (a) (1) because of its "particular and somewhat unusual facts." The instant case squarely meets the court's criteria for finding

2/ (Continued)

Gleason's pretrial preparation. In addition, the requests were not accompanied by any coercive or threatening statements and compliance with the requests was completely voluntary. Furthermore, the Regional Office, which was aware of the purpose of the requests, did nothing to discourage the employees from obtaining copies of their statements and furnishing same to Gleason. The Chairman, therefore, would find that the requests were lawful. Robertshaw Controls Company, Lux Time Division, 483 F2d (C.A. 4, 1972).

that, in cases, as here, where extensive unfair labor practices are alleged, an employer's request that its employees provide it with copies of statements given to the Board violates Section 8 (a) (1).

#### ORDER

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents Martin A. Gleason, Inc., and Gutterman Funeral Home, Inc., Brooklyn, New York, their officers, agents, successors, and assigns, shall take the action set forth in said recommended Order; and the complaint against Respondent Walter B. Cooke, Inc., Brooklyn, New York, be, and it hereby is, dismissed in its entirety.

Dated, Washington, D.C. December 6, 1974.

Edward B. Miller, Chairman

John H. Fanning, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)



NOTICE

Pursuant to the newly instituted pre-trial procedures, as set forth in the accompanying Complaint, PLEASE NOTE:

THE PRE-TRIAL CONFERENCE in this matter is scheduled for February 25, 1974, at 12:00 NOON in the Ceremonial Courtroom, 2nd floor, U.S. District Court, 225 Cadman Plaza East, Brooklyn, New York.

THE TRIAL of the case is scheduled for MARCH 5, 1974, at 11:00 A.M., at 16 Court Street, Fourth Floor, Brooklyn, New York.

\_\_\_\_\_  
[Dated 1/31/74]

\* \* \*

ORDER CONSOLIDATING CASES, COMPLAINT, NOTICE OF  
PRE-HEARING CONFERENCE, AND NOTICE OF HEARING

It having been charged in Case No. 29-CA-3602 by Local 100, Service Employees International Union, AFL-CIO, herein called the Union, that Martin A. Gleason, Inc. herein called Respondent Gleason, and in Case No. 29-CA-3604 that Gutterman Funeral Home, Inc. herein called Respondent Gutterman, and in Case No. 29-CA-3605 that Walter B. Cooke, Inc. herein called Respondent Cooke have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et. seq., herein called the Act, the

General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations - Series 8, Section 102.15 hereby issues this Consolidated Complaint, Notice of Pre-Hearing Conference, and Notice of Hearing and alleges as follows:

1. The Charges in these proceedings were filed by the Union On October 18, 1973, and served by registered mail upon Respondents Gleason, Gutterman and Cooke on October 18, 1973.

2. Respondents Gleason, Gutterman and Cooke are, and have been at all times material herein, corporations duly organized under, and existing by virtue of, the laws of the State of New York

3 (a) At all times material herein Respondent Gleason has maintained its principal office and place of business at 149-20 Northern Boulevard, Flushing in the City and State of New York where it is, and has been at all times material herein, engaged in the retail sale of funeral services and related products.

3 (b) At all times material herein Respondent Gutterman has maintained its principal office and place of business



at Broadway and West 66th Street in the City and State of New York and a place of business in Brooklyn, New York, where it is, and has been at all times material herein, engaged in the retail sale of funeral services and related products.

3 (c) At all times material herein Respondent Cooke has maintained its principal office and place of business at 1504 Third Avenue, in the City and State of New York, and various other places of business in the City of New York, where it is, and has been at all times material herein engaged in the retail sale of funeral services and related products.

4. During the past year, which period is representative of their annual operations generally, Respondents Gleason, Gutterman and Cooke, in the course and conduct of their operations each derived gross revenues therefrom in excess of \$500,000.

5. During the past year, which period is representative of their annual operations generally, Respondents Gleason, Gutterman and Cooke, in the course and conduct of their businesses, each purchased and caused to be transported and delivered to their places of business, coffins, urns, and other goods and materials valued in excess of \$50,000 of which goods and material valued in excess of \$50,000 were transported and delivered to their places of business in interstate commerce directly from states of the United States other than the state in which they are located.

6. Respondents Gleason, Gutterman, and Cooke, and each of them, are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

7. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2 (5) of the Act.

8 (a) John Gleason, is, and has been at all times material herein, the President of Respondent Gleason, acting on its behalf, and an agent thereof.

8 (b) Michael Gutterman, is and has been at all times material herein the Secretary of Respondent Gutterman, acting on its behalf, and an agent thereof.

8 (c) Francis J. Montemuro, is, and has been at all times material herein an Assistant Manager of Respondent Cooke, acting on its behalf, and a supervisor thereof within the meaning of Section 2 (11) of the Act.

9 (a) For the three year period ending October 9, 1973 Respondents Gleason, Gutterman and Cooke, through their membership in the Labor Committee of the Metropolitan Funeral Directors Association, Inc., a trade organization, were parties to a collective bargaining agreement with the Union covering certain of their employees.

9 (b) In July 1973 Respondent Cooke withdrew from participation in the Labor Committee and informed the Union of its intention to negotiate separately for a new contract.

9 (c) Thereafter, in or about September and October, 1973 the Labor Committee and Respondent Cooke each negotiated separately with the Union for terms of a new contract, but they were unable to reach agreement.

9 (d) On or about October 12, 1973 the Union called a strike against three members of the Labor Committee, other than Respondents Gleason and Gutterman.



9 (e) On or about October 12, 1973 some members of the Labor Committee, including Respondents Gleason and Gutterman, locked out their employees who were represented by the Union.

9 (f) On or about October 14, 1973, Respondent Cooke locked out its employees who were represented by the Union.

10. On or about October 13 and 15, 1973, and on various other dates presently unknown during the month of October 1973, Respondent Gleason, by its President John Gleason, its agent, and by other supervisors or agents presently unknown, informed employees locked out, as described above in paragraph 9, that they would not be permitted to return to work unless they resigned from the Union.

11. On or about October 13, 1973, and on various other dates presently unknown during the month of October 1973, Respondent Gutterman, by its Secretary Michael Gutterman, its agent, and by other supervisors or agents presently unknown informed employees it locked out, as described above in paragraph 9, that they would not be permitted to return to work unless they resigned from the Union.

12. On or about October 15, and 26, 1973, and on various other dates presently unknown during the month of October 1973, Respondent Cooke, by its Assistant Manager Francis J. Montemuro, its agent, and by other supervisors or agents presently unknown, informed employees it locked out, as described above in paragraph 9, that they would not be permitted to return to work unless they resigned from the Union.

13. From on or about October 12, and 13, 1973 until on or about December 17, 1973, Respondents Gleason and Gutterman

locked out their employees who were represented by the Union, as described above in Paragraph 9, with an object to force or require them to resign from the Union and to permit only non-union employees to return to work.

14. From on or about October 14, 1973 until on or about December 17, 1973, Respondent Cooke locked out its employees who were represented by the Union, as described above in paragraph 9, with an object to force or require them to resign from the Union, and to permit only non-union employees to return to work.

15. By the acts described above in paragraphs 9 (e), 10 and 13, and by each of said acts, Respondent Gleason interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

16. By the acts described above in paragraphs 9 (e), 11 and 12 and by each of said acts, Respondent Gutterman interfered with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

17. By the acts described above in paragraphs 9 (f), 12 and 14 and by each of said acts, Respondent Cooke interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed



in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

18. By the acts described above in paragraph 13 and by each of said acts, Respondents Gleason and Gutterman discriminated and are discriminating in regard to the hire and tenure and terms and conditions of employment of their employees, thereby discouraging membership in a labor organization, and thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and Section 2 (6) and (7) of the Act.

19. By the acts described above in paragraph 14 and by each of said acts, Respondent Cooke discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and Section 2 (6) and (7) of the Act.

20. The acts of Respondents Gleason, Gutterman and Cooke described above in paragraphs 9 through 14 occurring in connection with the operations of Respondents Gleason, Gutterman and Cooke, described above in paragraphs 2 through 6, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 25th day of February 1974, at 12 noon at the Ceremonial Courtroom, 2nd floor, U.S. District Court; 225 Cadman Plaza East, in the Borough of

Brooklyn, City and State of New York a hearing will be conducted before a duly designated Administrative Law Judge of the Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations the Respondents shall each file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, and original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Consolidated Complaint shall be deemed to be admitted by each to be true and may be so found by the Board. Immediately upon the filing of its answer, each Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 31st day of January, 1974.

/s/ Samuel M. Kaynard

Regional Director  
National Labor Relations Board  
Region 29  
16 Court Street  
Brooklyn, New York



SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE  
NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS  
PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.



## TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE  ACTION:  INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE  <input type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

CNY 131960 10LR

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

REPORT DELIVERY

February 20, 1974

Fellner & Rovins, Esqs.  
Att: Samuel D. Rosen, Esq.  
230 Park Avenue  
New York, New York 10017

William R. Pitassy, Esq.  
549 Broadway  
Massapequa, New York 11754

Walter B. Cooke, Inc.  
1504 Third Avenue  
New York, New York

Martin A. Gleason, Inc.  
149-20 Northern Boulevard  
Flushing, New York

Gutterman Funeral Home, Inc.  
1970 Broadway  
New York, N.Y. 10023

Local 100, Service Employees  
International Union, AFL-CIO  
549 Broadway  
Massapequa, New York 11754

Re: Martin A. Gleason, Inc.  
Cases Nos. 29-CA-3602, 29-CA-3604,  
29-CA-3605

PLEASE TAKE NOTICE that on the opening of the hearing in the above-captioned matter, Counsel for General Counsel will move to amend the Consolidated Complaint as follows:

1. Paragraph 10 of the Consolidated Complaint to be amended by renumbering it 10(a) and by the addition of the following subparagraph "(b)"

"(b) On or about February 11, 1974, and on various other dates presently unknown during the month of February 1974, Respondent Gleason, by its President and agent, John Gleason, demanded and required that its employees obtain and turn over copies of affidavits and statements provided by said employees to agents of the National Labor Relations Board in the course of the investigation of the above matter."

SECURITY CLASSIFICATION

PAGE NO. NO. OF PGS.

## TELEGRAPHIC MESSAGE

NAME OF AGENCY		PRECEDENCE  ACTION:  INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED		TYPE OF MESSAGE  <input type="checkbox"/> SINGLE <input type="checkbox"/> BOOK <input type="checkbox"/> MULTIPLE-ADDRESS
FOR INFORMATION CALL			
NAME	PHONE NUMBER		
THIS SPACE FOR USE OF COMMUNICATION UNIT			
MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)			
<p>TO:</p> <p>2. Paragraph 15 will be amended to read as follows:</p> <p>"15. By the acts described above in paragraphs 9(e), 10(a), 10(b) and 13, etc., etc. . . "</p> <p>Joel H. Friedman Counsel for the General Counsel National Labor Relations Board Region 29 16 Court Street Brooklyn, New York 11241</p>			
		SECURITY CLASSIFICATION	
PAGE NO.		NO. OF PGS.	



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----X  
MARTIN A. GLEASON, INC.,  
et. al.,

and

LOCAL 100, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO  
-----X

Case Nos. 29-CA -3602  
29-CA -3604  
29-CA -3605

ANSWER

Respondent, MARTIN A. GLEASON, INC. by Fellner and Rovins, its attorneys, hereby answers the Complaint herein and denies each and every allegation therein except that it admits the allegations contained in paragraphs 1, 2, 3(a), 4, 5, 6, 7, 8(a), 9(a), 9(c), 9(d) and 9(e) thereof to the extent that they pertain to said Respondent, denies knowledge sufficient to admit or deny the allegations of paragraphs 9(b) and 9(f), and denying the other allegations contained therein, moves for the dismissal of said Complaint.

Respectfully submitted,

FELLNER AND ROVINS  
Attorneys for Martin A. Gleason, Inc.

/s/ Alan D. Gallay

By: Alan D. Gallay

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

-----X  
MARTIN A. GLEASON, INC.  
et. al.,

and

LOCAL 100, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO.  
-----X

Case Nos: 29-CA-3602  
29-CA-3604  
29-CA-3605

ANSWER

Respondent GUTTERMAN FUNERAL HOME, INC., by  
Fellner and Rovins, its attorneys, hereby answers the Complaint  
herein and denies each and every allegation therein except that  
it admits the allegations contained in paragraphs 1, 2, 3(b), 4, 5,  
6, 7, 8(b), 9(a), 9(c), 9(d), and 9(e) thereof to the extent that  
they pertain to said Respondent and denying the other allegations  
contained therein, moves for the dismissal of said Complaint.

Respectfully submitted,  
FELLNER AND ROVINS  
Attorneys for  
Gutterman Funeral Home, Inc.

/s/ Alan D. Gallay

By: Alan D. Gallay



Francis M. Connelly  
1045 Reilly Street  
Bay Shore, New York  
11706

February 11, 1974

Francis M. Connelly  
1045 Reilly Street  
Bay Shore, New York  
11706

Mr. Julius Hoffman  
National Labor Relations Board  
Region 29  
16 Court Street  
Brooklyn, New York 11214

Dear Sir;

This is in reference to Case # 29-CA-3602

I am requesting that a transcript of my statement given to you regarding the Lockout of October 13, by the Members of the Metropolitan Funeral Directors Association; be sent to the Martin A. Gleason Inc. 149-20 Northern Blvd. Flushing, N.Y. 11354.

I am doing this at the request of my employer. I would like to ask you if this will jeopardize my position in this matter. I don't believe that it will but I want to be sure. If you consider this hazardous please advise me.

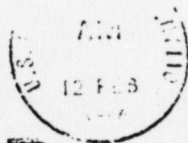
Thank you

*Francis M. Connelly*  
Francis M. Connelly

NATIONAL LABOR RELATIONS BOARD  
Ticket No. 29-CA 3602 OFFICIAL EXHIBIT NO. 642  
Disposition { Identified X  
Received \_\_\_\_\_  
Rejected \_\_\_\_\_  
In the matter of GLEASON  
Date 4/30/74 Witness \_\_\_\_\_ Reporter [Signature]  
No. Pages 1

4/30/74  
R-X-1 [Signature]

nnelly  
Street  
ew York



ZIP CODE



Mr. Julius Hoffman  
National Relations Labor Board  
Region 29  
16 Court Street  
Brooklyn, New York 11214



James M. Connelly Jr.  
 77 Cameron Ave  
 Hempstead, NY 11550  
 February 11, 1974

National Labor Relations Board  
 Region 29  
 16 Court Street  
 Brooklyn, New York 11214

Dear Mrs. Hoffman,

I would like to request a transcript  
 of the statement that I made with  
 the board, case #29-CA-3602, Martin A.  
 Gleason Inc.

Very truly yours

James M. Connelly Jr.

NATIONAL LABOR RELATIONS BOARD  
 Docket No. 29-CA-3602 OFFICIAL EXHIBIT NO. 66-11  
 Disposition { Identified X  
 Received \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 In the matter of Gleason  
 Date 4/2/74 Filed \_\_\_\_\_  
 Page 1

TELETYPE	Telegram
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HEA776(2014)(1-030905A266)PD 10/15/73 1419

ICS IPMFTNA NYK

01046 (1-019116C286 1415)

ICS IPMHE31

03114 FR QU JAMAICA NY 23 10-15 244P EDT

RICHARD OKEEFE PRES LOCAL 100 SERVICE EMPLOYEES

INTL UNION AFL CIO 549 3WAY MASSAPEQUA NY

I HEREBY NOTIFY YOU THAT I RESIGN FROM LOCAL 100 SERVICE

EMPLOYEES INTERNATIONAL UNION AFL CIO AS OF OCT 15 1973

ROBERT J GALLAGHER BOOK NBR 1944

5/1/74 Gleason

541-6006

#2368

me

10358

CF-1201 (115-00)

TELETYPE	Telegram
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HEA131(0920)(1-002841C287)PD 10/14/73 0917

ICS IPNOUNC NYK

03042 FR QU JAMAICA NY 32 10-14 1007A EDT

PMS RICHARD OKEEFE PRES LOCAL 100 SEIU REPORT DLY WITH SIGNATURE

DONT DUN 549 BROADWAY

MASSAPEQUA NY 11758

DEAR MR OKEEFE THIS IS TO OFFICIALLY NOTIFY YOU OF

MY MEMBERSHIP RESIGNATION FROM LOCAL 100 EFFECTIVE

SUNDAY OCT 14 1973 MY BOOK NUMBER IS 1946

ALBERT T PHILIPPS 212 746 0014 17-35 MURRAY ST

WHITESTONE NY 11357

ms (K)

1031

24-CA-2602

DL7

5/1/74 Gleason

C.B.

CF-1201 (115-00)



EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

-----X  
In the Matter of:

MARTIN A. GLEASON, INC.

and

GUTTERMAN FUNERAL HOME, INC.

and

WALTER B. COOKE, INC.

and

LOCAL 100 SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO

Case Nos.:  
29-CA-3602,  
3604, 3605

-----X  
16 Court Street  
Brooklyn, New York  
April 30, 1974

The above entitled matter came on for hearing pursuant  
to Notice, at 11:00 o'clock A.M.

BEFORE:

IRVING M. HERMAN, Administrative Law Judge.

APPEARANCES:

ALAN D. GALLAY, ESQ.	Fellner & Rovins, Esqs., 230 Park Avenue, New York, New York 10017, appearing on behalf of the Employer
WILLIAM R. PITASSY, ESQ.	549 Broadway, Massapequa, New York, 11758, appearing on behalf of Union Local 100.
JOEL H. FRIEDMAN, ESQ.	16 Court Street, Brooklyn, New York, appearing on behalf of General Counsel

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## PROCEEDINGS

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JUDGE HERMAN: The document is received as Exhibit 1A through 1DD.

(Whereupon, General Counsel's Exhibits 1A to 1DD was received into evidence, of this date.)

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Mr. Friedman, is it the General Counsel's contention that the lock out apart from the offer to reinstate the employees if they withdrew from the union it is unlawful?

MR. FRIEDMAN: No, your Honor.

In that we are not attacking for example the timing or the bargaining contention of it.

In other words, we are not dating the violation to the offer of conditional reinstatement, but, rather to the beginning.

This shows what one of the motives for the lock out was, as I say, we are not attacking the timing or the bargaining contention as to why the lock out arose.

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JUDGE HERMAN: Mr. Friedman has conceded he is not attacking the lock out in and of itself.

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Pursuant to the notice of motion served on February 20, 1974 General Counsel will now move to amend the consolidated complaint as follows:

Paragraph 10 of the consolidated complaint would be amended by renumbering it 10A and by the addition of the



following subparagraph B; on or about February 11, 1974 and on various other dates presently unknown during the month of February, 1974 respondent, Gleason, by itself president and agent, John Gleason demanded and required that its employees obtain and turnover copies of the affidavits and statements provided by said employees to agents of the National Labor Relations Board in the course of the investigation of the above matter and then the further amendment would be that paragraph 15 will be amended to read as follows:

By the Act described above in paragraphs 9E, 10A, 10B and 13, and from there the paragraph 15 would continue on as it presently reads.

JUDGE HERMAN: Do you have any objection, Mr. Gallay to that amendment?

MR. GALLAY: Yes, we do, your Honor.

We believe it is incumbent upon the General Counsel to conduct an investigation into matters such as this rather than to raise allegations based upon an ex parte investigation.

We feel that ample time was available for the Government to afford us the opportunity to respond to these matters and that failing to have followed that procedure as required by the Board rules and regulations the motion is inappropriate.

JUDGE HERMAN: The motion is granted.

\* \* \*

Now, I understand that there is a stipulation that you are jointly offering?

MR. FREIDMAN: The parties have reached a stipulation with regard to the names of the employees of the three Respondents

who are involved in the lock out in question and we would at this time offer as I guess this would be Joint Exhibit, perhaps the best way would be Joint Exhibits 1, 2 and 3, a list consisting of the names of those employees. Joint Exhibit 1 would be the employees of Walter B. Cooke.

Number 2 would be the employees of Gutterman's and number 3 would be the employees of Martin A. Gleason.

JUDGE HERMAN: Is that satisfactory, Mr. Gallay?

MR. GALLAY: Yes, I will join in that stipulation.

MR. PITASSY: So stipulated.

MR. GALLAY: So stipulated.

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JUDGE HERMAN: The stipulation is accepted.

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16

FRANCIS M. CONNELLY, SR.

called as a witness, having been first duly sworn in by Judge Herman, was examined and testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Friedman) Mr. Connelly, you are employed by whom?

A. Martin A. Gleason, Inc.

Q. In what capacity did you work there?

A. As a licensed funeral director.

Q. How long have you been working for them in that capacity?

A. Approximately three, three and a quarter years.

Q. Are you also a member of Local 100?

A. Yes.

Q. How long have you been a member of Local 100?



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A. About the same length of time.

Q. During the course of your employment with Gleason, did there come an occasion when you were instructed not to report to work?

A. Yes.

Q. Do you recall when this was?

A. On October 13, 1973.

Q. Could you tell us who told you?

A. Mr. John Gleason told me.

Q. Where was this conversation?

A. In Mr. John Gleason's office.

Q. Could you relate for us the conversation, first of all can you tell us who all was present?

A. Martin Gleason was present.

Louis Russo, Robert Gallagher and Albert Philips.

JUDGE HERMAN: Who are these people?

THE WITNESS: Gallagher, Phillips and Louis Russo, are licensed funeral directors and Martin Gleason and John Gleason are the owners of the establishment.

Q. Are there any other licensed funeral directors employed by Gleason to your knowledge at that time?

A. No, oh yes, my son.

Q. Was he present at this time?

A. No.

Q. Would you now relate to us the conversation, what was said by whom as it transpired?

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A. Well, after working hours, around 6:00 P.M. on October the 13th we were called into Mr. Gleason's office and

with the information that we were to have a meeting.

As Mr. Gleason opened the meeting he stated that as of that moment that we were relieved of our duties in the Gleason Funeral Home and the explanation he offered at the time, that being a member of the Metropolitan Funerals Association, who are in negotiations with Union Local 100 that Local 100 had struck three Brooklyn establishments and since they had struck the Brooklyn establishments who are members of the Metropolitan, that the membership of the Metropolitan Funeral Directors Association felt in good conscience that they had to restrict their employees from further employment until the issues were settled.

Q. Was anything further said or was anything said by any of the employees?

A. Yes, about that time, Bob Gallagher asked that if he was not in agreement with it, what alternatives did he have and he was instructed by Mr. Gleason that since the contract had expired that we were under no obligations to the union and that if we resigned from the union we would be accepted back for work.

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Q. Was anything further said about that or how that could be accomplished?

A. Yes, I believe I asked around that point that if we resigned from the union and then they negotiated the contract subsequently with the Metropolitan, what would our state be, we would be without representation and would we be accepted back into the union and the explanation at that time was that the most



they could do would be to charge us reinitiation fees, but, they would have to accept us back.

Q. Who stated that?

A. Mr. Gleason.

Q. Was anything said about the procedure for resigning?

A. Yes, they stated that Mr. John Gleason stated that in order to resign we would have to notify the union by phone or telegram of our intention and then we would be accepted back.

Q. And then what happened with regard to this meeting?

A. Well, I believe shortly after that it was terminated and as we left Mr. Gleason stated that we could not make a decision at that moment, we had to think on it and then call him later and let him know what our decision would be and regardless of which way it went, that there would be no hard feelings.

Q. Now, did you have any further meetings with Mr. Gleason or any representative of management concerning the lock out?

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A. Yes, the 13th was Saturday and we arranged a meeting for Monday which would be the 15th to discuss the matter as to whether the position was cemented, so to speak, whether he would be willing to accept us back on other terms.

Q. Who arranged this meeting?

A. I believe Mr. Benson of the Local 100, because I called him to find out just what was going on because at that particular point I wasn't too sure of what was happening.

Q. Did you then go down to the premises?

A. On Monday we had an appointment at 1:00 o'clock with Mr. John Gleason at his office.

We met there, my son and I arrived there at the appointed time and Mr. Benson was delayed and we waited until he showed up with another gentleman from the union.

Q. Did you then meet with a representative of Gleason?

A. Yes, with Mr. John Gleason himself.

Q. Where was this meeting?

A. In Mr. John Gleason's office.

Q. Could you tell us again what was said and by whom?

A. Well, as near as I can recall Mr. Benson asked Mr. Gleason if he would change his position and allow us to return to work rather than honor a lock out and again I think Mr. Gleason stated the same thing that a strike against one of the membership was a strike against them all.

21 Therefore, he felt that he had to stand with the Metropolitan on that particular issue.

\* \* \*

Q. Following this meeting, what then happened?

A. Well, we were told that the lock out would continue so then we were put out -- you know, restricted from employment, so then we joined the picket line with the rest of the people that were locked out.

Q. Did you at anytime resign from the union?

A. No.

Q. Did you eventually return to work?

A. Yes.

Q. Do you recall when you returned to work?

A. Around or about December the 15th.

Q. How did it come about that you returned to work?



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A. The union notified us that the Metropolitan accepted the union contract and we had a ratification meeting which the membership ratified it and I in turn called Mr. Gleason and told him that it was ratified and he said as soon as the schedule was amended he would notify me when to start work again.

Q. Did you eventually contact the company on that?

A. Yes, I called Mr. Gleason on it, yes.

Q. Following your return to work, by the way, did you ever receive any pay for the time that you were out?

A. No.

Q. Now, during the course of this proceeding, did you have occasion to give a statement to a Board agent?

A. Yes.

Q. Do you recall about when that was?

A. I believe it was in January or February.

I am not certain of the dates.

I was notified that I was requested to give a statement as to what occurred at my particular place of employment.

Q. Who had notified you of this?

A. The Union representative.

Q. Which one was that, do you recall?

A. I believe Mr. Benson, I had most contact with him.

Q. Now, following this statement, did you have any occasion to discuss this statement at all with your employer?

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A. A couple of months ago Mr. Gleason asked me if I had any objections to him getting a copy of that statement and I told him, no, whatever I said in the statement I was willing to say in person.

Q. Where was this conversation?

A. In his office, John Gleason's office.

Q. How did you come to be in the office?

A. I was summoned there by Mr. Gleason.

Q. Did he say anything further about this?

A. No, I didn't question as to why he wanted it because I more or less understood and I thought I understood why he wanted it, so, I just requested it.

Q. What did you then do at that time?

A. When I received it, I gave it to him.

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(Whereupon, above referred to document was marked General Counsel's 2 for identification, of this date.)

Q. Mr. Connelly, I show you this document being General Counsel's Exhibit 2 marked for identification -- please.

MR. GALLAY: May I see it, please?

MR. FRIEDMAN: I would ask you if you can identify that?

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THE WITNESS: Yes, that is mine.

Q. Is that a letter you sent?

A. Right.

Q. Do you recall what day you sent that letter?

A. The same date that is on there, February the 11th.

Q. Could you describe the relationship between that day and the day on which you had this conversation with Mr. Gleason that you just referred to?

A. I'm sorry.

Q. How long after your conversation with Mr. Gleason, did you send that letter?



A. Within hours.

I would say within an hour or two.

Q. So it was the same day in other words?

A. Yes, the same day.

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### CROSS EXAMINATION

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Q. (By Mr. Gallay) Turning to the meeting on the 15th of October, did I understand you to say that you requested that this meeting be convened?

A. I called Mr. Benson and -- to find out what was happening because up to that point I received no information either from Mr. Gleason or Mr. Benson as to what was happening with the negotiations and I was frankly bewildered that I should be locked out because of something that was happening down in Brooklyn which I felt had nothing to do with me or with the problems involved with us.

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So I called Mr. Benson to ask him, you know, if we could arrange a meeting and see if this thing couldn't be rectified immediately so that we could go back to work.

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Q. During the period of negotiations, prior to the strike and lock out, did you pay any assessments to a strike fund?

A. Prior to the lock out?

Q. Yes.

A. Yes, I did.

Q. Was this weekly deduction?

A. Yes.

Q. Did you receive any strike benefits when you were locked out?

A. From the union, yes.

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\* \* \*

Q. Turning now to the conversation that you had with Mr. Gleason with regard to your affidavit, would you tell us approximately when Mr. Gleason talked to you about a copy of the affidavit?

\* \* \*

A. Well, February 11th is the date that we discussed -- the date on the affidavit.

Q. You are talking about the date on the letter which was previously marked General Counsel's 2 for identification?

A. Yes, I was asked to report to Mr. Gleason's office and when I reported there he said he would like a copy of the testimony or affidavit or whatever you call it that I gave to the National Labor Relations Board and would I object to getting it.

I stated at that time that I had no objections because whatever I said in that statement I would gladly say it to him personally and within a few hours I typed a letter on his typewriter and I sent it out.

Q. Did he tell you what to say in this letter?

A. No.

Q. Now, you say you were told to report to his office. Who told you to report to his office?

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A. I would say Mr. Russo because 90 percent of the time that I am given any instructions it is usually through Mr. Russo.

Q. How long did this conversation with regard to obtaining a copy of this affidavit last?

A. It was very brief.



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## REDIRECT EXAMINATION

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You identified Mr. Russo as having told you to report to the office.

At that time February 11th, what was Mr. Russo's position?

A. As I understand it Mr. Russo is vice president of the firm and he is a supervisor of the men.

He kind of is John's intermediary.

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FRANCIS M. CONNELLY, JR.

called as a witness, having been first duly sworn by Judge Herman, was examined and testified as follows:

## DIRECT EXAMINATION

Q. (By Mr. Friedman) Mr. Connelly, you are employed by whom?

A. Martin A. Gleason, Inc.

Q. In what capacity do you work --

A. Licensed funeral director.

Q. How long have you held that position?

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A. I will be there two years in June.

Q. Are you also a member of Local 100?

A. I am.

Q. How long have you been a member, about?

A. The same amount of time.

Q. Now, during the course of your employment with Gleason, did you have -- was there an occasion when you were told not to report to work?

A. Yes, there was.

Q. Do you recall when that was?

A. This was on October, I believe the 13th.

Wait a minute, now I am not sure, it was on Sunday when I talked with Mr. Gleason, in a phone conversation with him.

Q. Had you been at work on the 13th?

A. No, I wasn't.

Q. How did this phone conversation come about, who called whom?

A. On the 13th I was out and I was told that the funeral home was trying to get in touch with me.

Q. Who told you this first of all?

A. Well, my sister and so I called the funeral home that evening.

I believe it was around 6 or so and I talked with Mr. Martin Gleason, who told me that, let me see -- he told me that John would be getting in touch with me soon.

Q. Did you then have occasion to speak to Mr. John Gleason?

A. No, I didn't.

The next morning Mr. Gleason called me.

Q. Will you tell us what was said during this next conversation?

A. At that time he told me -- he explained the situation that the negotiations or that the negotiations had stopped that the union was striking three other places I believe in Brooklyn and at that time Metropolitan decided that they were going to lock out their people and he said he had to go along with the decision



this way relieving me from duty and everybody else who worked there.

JUDGE HERMAN: Everyone who worked there?

THE WITNESS: Well, all the licensed people that were in the union.

\* \* \*

68 Q. Did you have any further conversations with Mr. John Gleason?

A. Well, yes.

The next day Mr. Gleason contacted me and he told me that or I explained the situation, he contacted me by mistake.

He was trying to get in touch with my father so I explained the situation that we were suspended and I asked what we could do and he said I don't know, we would have to talk after I got off the phone with Mr. Benson.

69 We arranged for time to be at the funeral home and I called Mr. Gleason and asked what was going on more thoroughly and I asked him if we could have a meeting with Mr. Benson and he said sure.

So we arranged for a meeting that afternoon.

Q. Was anything said during that phone conversation with regard to the lock out?

A. Yes, he just re-enforced it as far as his position with the Metropolitan went and also at that time I asked him what alternative I would have and he said the only alternative that you could have would be to -- you know, if you would resign from the union.

Q. Did he say anything further along that line?

A. Well, that was about it.

Then and so we arranged for the meeting -- oh, wait a minute.

I would like to add something to that. I also explained that, you know, it didn't seem right that I could resign from the union at that time, you know, what would happen and he explained at that time, that there would be, you know, he wouldn't allow anything to happen to me if I should decide that way that he would not sign a contract unless there was a no recrimination clause in it.

Q. Did you speak to Mr. Gleason at all later that day?

70 A. Yes, we had the meeting later in the day. That was after the phone conversation.

Q. Do you recall about what time this meeting was?

A. Well, it was supposed to be around 1:00 o'clock.

We got in there and we talked for about three quarters of an hour or so waiting for Mr. Benson to arrive.

So we talked for that time.

Q. During this conversation, well, first of all where was this conversation?

A. This was in Mr. Gleason's office.

Q. Who was present at this point?

A. There was my father, Mr. Gleason and myself.

Q. Would you relate to us what was said?

A. Again, we just went over the whole situation again and we just kind of went over everything again.

Q. Could you tell us as near as possible what did you and/or your father say to Mr. Gleason and what was his responses?

A. We asked if there wasn't possibly a way of doing it without resignation from the union, if there was any type of



alternatives at all.

That's about what we talked about.

Q. Who brought up that topic?

A. I believe I did.

Q. Can you recall what specifically was your question then?

A. Exactly what I said.

71 Q. As nearly as you can recall?

A. I think I asked something to the effect that, you know, why we were involved in this thing because it seemed to me, you know, none of these problems which the Metropolitan was involved in were with the union really, affected us as far as terms in the contract.

Q. What did Mr. Gleason respond to that?

A. He responded that he was part of the Metropolitan and that he didn't feel as though he could stand alone on this when facing the union, so he had to become part of the Metropolitan as a whole and stand behind it.

\* \* \*

73 What was said on the 15th?

THE WITNESS: Well, on the 15th it was just a kind of informal talk.

We were discussing anything just about came under the sun. At that time as far as it pertains to the case, I don't recall.

\* \* \*

Did you then continue -- did Mr. Benson eventually come into this meeting?

74 A. What happened is, Mr. Benson was a little bit later than I think my father recalls.

I think it was more like 3:00 o'clock when he did come.

\* \* \*

Q. Now, when Mr. Benson came in, did you then have any further meeting with Mr. Benson?

A. Yes.

Q. Do you recall what was said at that time, that meeting?

A. Yes, let me think.

\* \* \*

Wait a minute, I'm sorry, I didn't say that Mr. Benson -- I'm getting very confused, I'm sorry.

The events are very vague to me, I'm trying my best to recall exactly what happened.

Q. You stated I believe that you don't recall specifically if anything was said at that point?

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A. Yes.

Q. Did you give a statement to a Board agent?

A. Yes, I did.

Q. At the time you gave that statement, was your recollection of facts better than it is at the present time?

A. Yes, it is.

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MR. FRIEDMAN: Your Honor, I would ask to have this marked for identification as General Counsel's Exhibit 3.

JUDGE HERMAN: It will be marked --

MR. GALLAY: What is that that you refer to?

MR. FRIEDMAN: This is the document that will be identified with the next question.

(Whereupon, document referred to was marked General Counsel's Exhibit 3 for identification, of this date.)



Q. Mr. Connelly I show you this document being marked General Counsel's Exhibit 3 for identification, and I ask you if you can identify the document?

A. Yes, I can.

Q. Will you tell us what that is?

A. This is the affidavit I gave to Mr. Goldberg when I came down here.

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Q. Did you swear to that affidavit?

A. Yes, I did.

Q. At the time you gave that affidavit, your recollection was better than it is today?

A. Yes.

\* \* \*

Q. I would call your attention to paragraph 8 of the affidavit and ask you if you would look at that --

MR. GALLAY: Objection, Mr. Law Judge, your Honor.

I don't think a sufficient foundation has been laid to warrant refreshing his recollection with this affidavit.

There is no doubt that the witness appeared confused at one point, but, he hasn't said that he doesn't recall.

JUDGE HERMAN: He said his memory is very vague to use his exact words.

He has been floundering and unable to come up with answers over a substantial period in this transcript and I think that's sufficient foundation has been laid for his recollection to be refreshed.

MR. FRIEDMAN: Would you read paragraph 8, please.

JUDGE HERMAN: Read it to yourself and let us know if that refreshes your recollection.

THE WITNESS: Yes

MR. GALLAY: There is no question in the table

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MR. FRIEDMAN: I believe there was a question, if that refreshed his recollection.

THE WITNESS: Yes, it does.

MR. GALLAY: At last I heard he was asked to read it.

JUDGE HERMAN: I asked him.

MR. GALLAY: I'm sorry, your Honor.

Q. (By Mr. Friedman) Can you now recall what was said at this meeting in Mr. Gleason's office?

A. Yes.

Q. Would you tell us what was said?

A. Well in essence what was said was we discussed what was going on.

JUDGE HERMAN: Not --

MR. GALLAY: Objection.

Q. Did you ask any questions of Mr. Gleason?

A. Yes, I did ask him alternatives to resignation from the union at that point and I also remember now, now I remember part -- you see at the time my wife was pregnant and I asked something about the benefits as to how I could resign at this point when I had no benefits with the union.

Q. Dealing specifically with the first question, referred to concerning alternatives, what was the response to that question?

\* \* \*

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A. He said no.

If I didn't resign from the union I could not work.

\* \* \*



Q. Following this meeting, did you resign from Local 100?

A. No, I didn't.

Q. When did you return to work?

A. It was I believe -- it was on the Monday, I believe it was December 17th.

I'm not sure of the date, it was on Monday of that week.

79 Q. Do you recall how it came about that you returned to work?

A. The union decided to accept the contract.

Ratified the contract and went back to work again after that.

Q. Had you any contact with your employer prior to returning to work at that point?

A. I called him up the next day after we ratified the contract and told him that the contract was ratified and asked when I could return to work.

Q. At that time a date was agreed upon?

A. Yes.

Q. Did you ever receive any pay for the period that you were out of work?

A. No, I didn't.

Q. Now, during the course of the investigation of this matter, did you have occasion to give an affidavit to a Board agent?

A. Yes, I did.

Q. Did you have any occasion to discuss that affidavit with any officials of Gleason?

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THE WITNESS: The only time would have been when Mr. John Gleason asked me to request from the Labor Board a copy of the affidavit.

Q. Do you recall when that was?

\* \* \*

A. It was February.

Q. Do you -- could you tell us how it came about that you were -- that had this discussion with Mr. Gleason?

A. Mr. Gleason called me into his office and he just asked me if I would request a copy of the affidavit for him.

Q. What was your response to that?

A. I said sure.

Q. Did you in fact do so?

A. I did.

Q. Can you place this conversation in time, do you know were you present when your father was asked for a copy of his statement?

A. No, I wasn't.

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Q. Following this discussion, what did you then do following this discussion with Mr. Gleason?

A. Then I wrote a letter to the Labor Board requesting the statement.

Q. Do you recall what day it was that you wrote the letter?

A. It was on the same day.

FR. FRIEDMAN: I would ask to have this document marked as General Counsel's Exhibit 4.

(Whereupon, document referred to was marked General Counsel's Exhibit 4 for identification, of this date.)



Q. I show you this document being marked as General Counsel's Exhibit 4 for identification --

JUDGE HERMAN: Do you want to see it?

MR. GALLAY: We will stipulate that the letter was dated February 11, 1974 and it requested a copy of the affidavit.

Q. (Mr. Friedman) Mr. Connelly, was that the date that you sent this letter?

A. Yes.

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FRANK MARINARO,

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was called as a witness by and on behalf of the General Counsel and, having been first and duly sworn, was examined and testified as follows:

\* \* \*

DIRECT EXAMINATION

Q. (By Mr. Friedman) By whom are you employed?

A. Gutterman's Inc.

Q. And in what capacity do you work for them?

A. Licensed funeral director.

Q. And how long have you been working for them?

A. About four and a half years.

Q. And are you a member of Local 100?

A. Yes, I am.

Q. How long have you been a member of Local 100?

A. Same time, four and a half years.

Q. Now during the course of your employment with Gutterman's, did there come an occasion when you were instructed not to report for work?

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A. Yes. It was on October the 14th on a Sunday morning when I cam back for a removal, Michael Gutterman had stated that he wanted to talk to us. And he took Augie and I into the room, and he says that -- excuse me -- he said that three years ago he had to do -- our things by going on strike, and we -- he was just following orders the same way, and therefore we would -- we would be locked out. Augie Tolomie is another licensed funeral director.

Q. Had you asked any questions during that period?

A. Well, there was a pause after he told us that we were being locked out. And then he said if you wanted to come back to work, you can send a letter to the union stating that you are resigning, and you can come back to work that Sunday morning. Then I said to him, you know there is a fine imposed on people if they resign from the union. I said are you going to pay the fines. He said his lawyers informed him there would be no reprisal against the member -- men if they went back to work.

Q. Can you place this in time, about what time, in the morning or --

A. I got back from one removal about 11:00 that night, and then just as I got back, there was a house removal up in Riverdale, by the time I got back from making the removal with Augie, it must have been around 12:30, quarter to one.

Q. And can you just place it as p.m. or a.m.?

A. This would be a.m., Sunday morning.

Q. Now, did you at any time resign from Local 100?

A. No, I did not.

Q. And did you eventually return to work?



A. Yes, I did.

Q. And could you tell us when was it that you returned to work?

A. It was about two days after the signing -- not the signing -- the agreement of the contract. I think it was December 15th.

Q. How did it come about, just briefly, that you returned to work?

A. Well, I think December the 12th we went in for ratification, and that night it was ratified. December 12th or the 13th, I don't know the exact date. And then the following day I called up work and I talked to Mr. Sherman, and I asked Mr. Sherman if I could come back to work. And he said yes. And I came back the 15th, which was Friday I think.

Q. Could you identify Mr. Sherman?

A. He's the manager of the New York branch.

Q. You said the person who told you you were locked out was who?

A. Michael Gutterman.

Q. Would you identify him?

A. He's the owner of the Gutterman's Inc. I think he's the secretary. He's the son to Mr. Benjamin Gutterman.

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#### CROSS EXAMINATION

\* \* \*

Q. Mr. Marinaro, you were a member of the Local 100 negotiating committee during the recent negotiations, were you not?

A. Yes, I am.

\* \* \*

194 Q. When did Mr. Michael Gutterman talk to you about the lockout?

A. It happened on the 14th of October, Sunday morning.

\* \* \*

197 Q. What did Michael say to you?

A. He got back he said he wanted to talk to us. He says roughly that three years ago you had your thing to do by going on strike, and now I am following orders, and you have locked out. Which time there was a pause, because I couldn't realize that they would lock us out and then I said to Michael, I says -- well, excuse me. There was a pause. And then he said if you want to come back to work, he says you send a letter to the union, stating that you're resigning and you come back to work Sunday morning. I in turn turned around to Michael, I said to Michael, are you going to pay the fines which will be imposed upon a man or anybody that went back to work, and he said the lawyers told them there would be no reprisals against the men coming back to work.

\* \* \*

203 Q. Did Mr. Tolomie say anything during this conversation?

A. I frankly don't recall.

Q. A minute ago you said that nothing else was left out, now you say you don't recall whether Mr. Tolomie said anything.

A. I don't recall.

Q. You don't recall anything else you said?

A. I said that I was surprised that you did it, you know, I was a little up tight about the situation, and I says well, I will give you my keys and Augie gave him his keys and that was it.



Q. Did anybody ask you for the keys?

A. No. But I figured it would be better to give it to him.

Q. Was this before or after Mr. Gutterman allegedly told you all you had to do was resign?

A. This was after.

\* \* \*

Q. Don't you recall Mr. Gutterman asking you whether he should notify any other employees or you would do so?

204

A. I did.

\* \* \*

Q. What did Mr. Gutterman say about notifying the other employees?

A. He asked me if he was going to notify the other employees or should I. So I said to him I would do it.

Q. You know what other employees he was referring to?

A. The rest of the union members.

Q. At which branch?

A. At all branches.

\* \* \*

207

Q. Did you collect strike assessment money from the employees or was it done the -- through check off by the company?

A. They took care of their own funds. They sent in their own assessments.

Q. The employees sent it in?

A. They sent in their own.

Q. Going back to conversation with Mr. Michael Gutterman, do you remember him using the term, "lockout?"

A. Yes

Q. Did he use any other term to describe that action that the company was taking?

A. No.

Q. Have you ever heard Michael Gutterman use the term "Defensive counter action?"

208

A. No.

\* \* \*

JOHN GLEASON,

called as a witness and, having been first duly sworn by the Hearing Officer, was examined and testified as follows:

\* \* \*

209

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q. Mr. Gleason, will you tell us what your position is with Martin A. Gleason, Inc.?

A. I am president.

Q. And about how long have you held that position?

A. How long?

Q. About how long?

A. 1946.

MR. FRIEDMAN: Your HONOR, I would ask to be allowed to question the witness under Rule 43B.

JUDGE HERMAN: I assume that.

Q. Mr. Gleason, how many licensed funeral directors does Gleason employ?

MR. GALLAY: I object to the question as being vague and ambiguous. Does he mean within the collective bargaining agreement or does he mean the collective bargaining



agreement and supervisory position?

JUDGE HERMAN: Suppose we start out with some stipulation between you as to the definition of the bargaining unit or the scope of this bargaining unit.

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210

JUDGE HERMAN: I think the one under the expired agreement might be more appropriate. And together with your statement -- your stipulation that there is no substantial change.

MR. GALLAY: Yes. I can indicate what point we changed the language. All we did was delete the last phrase. I am quoting from Article 1, Recognition; Section 1 of the agreement between the Funeral Directors, Embalmers and Undertakers Union Local 407 of SEIU, AFL-CIO which is the predecessor Local 100, and the Metropolitan Funeral Directors Association, Inc. Section 1. "The association and the employers recognize the union as the sole and exclusive bargaining unit -- agent for all licensed funeral directors, embalmers, undertakers, and registered trainee funeral directors who perform duties encompassed by their licenses, (called employees), excluding supervisors, preparators and principal stockholders of funeral establishments, their close family relatives, and all other employees, pursuant to the New York State Labor Relations Board certification of representative in case number SE-138084, dated May 9, 1966. End of section 1, end of Article 1, Recognition. For your identification the only changes made were twofold. One to include a category of registered residents. And secondly, to exclude reference to the New York State Board Certification. Registered

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residents in the new term for registered trainees. And therefore we just modified that by including both the old term and the new term. The coverage is the same, --

JUDGE HERMAN: Very good.

MR. FRIEDMAN: I would so stipulate.

JUDGE HERMAN: Now, Mr. Friedman, would you restate your question?

BY MR. FRIEDMAN:

Q. Mr. Gleason, how many licensed funeral directors do you employ in the bargaining unit?

A. Four.

\* \* \*

Q. I am placing this in time -- going back to the time of the lockout. Was it the same number?

A. Yes.

Q. Could you name the four licensed funeral directors at that time of the lockout who were within the unit?

A. Francis Connelly, Sr., Albert Phillipps, Bob Gallagher and Francis Connelly, Jr.

Q. On what day did your firm lockout these employees?

A. It was on a Friday, which I believe was two days after Mr. O'Keeffe's birthday.

\* \* \*

Q. Do you recall the date that the employees were actually notified of the lockout?

A. I think it was on the 13th. I believe it was on the 13th of October. We had negotiated through the 12th, and all day and all night, and negotiations were broken off about four o'clock



in the morning. So I believe it was the 13th.

Q. When you first notified the employees of the lockout, how many employees were notified?

A. There were two working that day, Albert Philipps, and Frank Connelly, Sr. There were two more. That would be Frank Connelly, Jr. and -- no, wait a second, I am wrong there. It was Robert Gallagher who was working and Frank Connelly, Sr. and Albert Philipps and Frank Connelly, Jr. were off.

So I tried to reach the both of them by telephone, that is, Frank Connelly, Jr. and Albert Philipps. I succeeded in reaching Albert Philipps about three o'clock in the afternoon. And he came in. I could not reach Frank Connelly.

Q. Now, at the time of the original decision to lay off, or at the time of the actual lay off were -- lockout, were all four of those men locked out?

A. Yes. They were all locked out. They were all told the same, except Frank Connelly, Jr.

Q. Now, did there come a time when two of those men returned to work?

A. Did there come a time when two of them returned to work?

Q. Returned to work during the course of the lockout?

A. Yes.

Q. Which two men returned to work?

A. Albert Philipps and Bob Gallagher.

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\*

Q. Is it true that they informed you that they had resigned from the union?

A. Yes, they did.

Q. At that time?

214

A. In fact they brought telegrams in to that effect, one made -- one brought a receipt from a telegram that he had sent to Mr. O'Keeffe, and the other brought in a receipt -- copy of the telegram.

\* \* \*

Q. Did you have conversations with Mr. Gallagher about his returning to work prior to the time he returned to work?

215

A. No, I did not.

Q. Did Mr. Gallagher ever ask you what he could do in order to return to work?

A. He did he -- he did ask me that.

Q. And what was your response?

A. My response was that I cannot tell you what to do. If I tell you what to do, this is -- something that would be involving, what would you say impediment to the National Labor Relations Board. So I couldn't tell you what to do.

\* \* \*

216

Q. Did he ever ask you "can I resign from the union?"

A. He asked what can I do. I said, I don't know what you can do at this point. Whatever you do you will have to do and think out for yourself.

\* \* \*



Q. Did Mr. Gallagher ask you what he should do if he wants to resign from the union?

A. He had said he wanted to resign from the union later. And then he said what he should do to resign from the union. Well, I said you will have to bring in some sort of document to prove to me that you resigned from the union.

Q. And did he in fact bring you a document?

A. He brought me a certification of a telegram.

Q. Do you recall what the telegram stated?

A. Not offhand. I would have to read it.

Q. Do you recall was the words to the effect that he had resigned from the union?

A. Genrally.

217 Q. And then what did you tell Mr. Gallagher when he showed you this telegram?

A. Well, I said that you have resigned from the union, and if you have resigned from the union I will notify you about coming back to work later.

Q. And did you then notify him?

A. Yes, I did.

Q. Approximately how many days later?

A. I think it was about two days.

Q. In fact didn't Mr. Gallagher return to work within a few hours after he showed you that telegram?

A. Well, he showed me the telegram in the morning, I think. It could have been about 11 o'clock in the morning of the day he returned to work. I am trying to place whether it was a Monday or a Sunday.

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\*

Q. I would show you this document being marked --  
(Friedman handing document to witness.)

Q. --being marked General Counsel's 5 and ask you is  
that a copy of the telegram you saw? Or let's say did you see  
a copy of that telegram? (Handing document to the witness.)

218

A. As far as I can remember, yes. In fact, in my  
briefcase there I believe I have a copy of the one in the file,  
so you know, I could show you that.

Q. When this telegram was shown to you, what did you  
do with it when he gave you this copy?

A. I placed it in his file, his personnel file.

MR. FRIEDMAN: Your Honor, I  
would offer this as General Counsel's Exhibit 5.

JUDGE HERMAN: Mr. Gallay?

MR. GALLAY: No objection.

JUDGE HERMAN: Received.

(General Counsel's Exhibit 5 marked  
in evidence.)

MR. GALLAY: By not objecting to  
it, I am in no way acknowledging that it's relevant.

\* \* \*

Q. Can you place the date upon which Mr. Gallagher returned  
to work, by the way?

A. I think it was a Sunday. It's pretty hard at this  
point to place a date. This goes back over six months.

Q. With regard to the beginning of the lockout, could  
you place it?

A. It was within a couple of days after the lockout.  
Or maybe it was within a day.



219 Q. Now, taking the situation of Mr. Philipps, could you tell us when did he first contact you about returning to work?

A. Well, he left after we told him of their suspension, he contacted me about nine o'clock by phone at my home that evening.

Q. And what did he say to you?

A. He said to me, he said I want to return to work. And he said I want to resign from the union. I said I can't tell you to do that.

Q. And what did he then say?

A. Well, he said I want to resign. He said I want to return to work. I said to him again, I said I can't tell you to resign from the union. Whatever you do is within your own province.

Q. And did he then make any proposals about resigning from the union to you?

A. He said I am going to resign. He said my wife and I have talked it over and I have decided to resign. I said whatever you do, you do by yourself. That's within your own province to do whatever you do.

Q. Do you recall when -- whether he asked you what would happen if he sent a telegram to the union resigning his membership?

A. No. He would ask me what would happen if he sent a telegram? Not in wording like that.

220 Q. Did you give a statement to an agent of the National Labor Relations Board?

A. Yes, I did. Mr. Joel Hoffman, I believe it was.

MR. FRIEDMAN: I would ask to have this marked as General Counsel's Exhibit Number 6 for identification.

(Document marked General Counsel's Exhibit 6 for identification.)

BY MR. FRIEDMAN:

Q. I would show you this document being marked General Counsel's Exhibit 6 for identification, and ask if you could identify that? (Handing document to witness.)

MR. GALLAY: We will stipulate that that's Mr. Gleason's affidavit.

A. Yes.

MR. GALLAY: Sworn to before Mr. Hoffman on the 20th day of November, 1973.

JUDGE HERMAN: Very good.

Q. I call your attention to page four of this affidavit. With regard to the bottom paragraph, I ask you if you would read that to yourself.

A. Yes, That's substantially correct.

Q. Does that refresh your recollection of whether Mr. Philipps asked you -- well, does that refresh your recollection as to what Mr. Philipps asked you?

A. Yes.

Q. Will you tell us what did he ask you at that point?

A. Will you allow me to return to work.

Q. And what was your response?

A. I can't tell you what to do.

Q. And then as you now recall the conversation would you tell us what was said?



A. What would happen if he sent a telegram to the union resigning his membership. And I said you would have to show me a copy of your resignation, whichever way you handle it. He then said he would send a telegram.

Q. This was the conversation -- this was the context of a conversation about his returning to work?

MR. GALLAY: Objection.

JUDGE HERMAN: Overruled.

A. The context of a conversation about his returning to work.

Q. This was what the conversation was about, why he called you?

A. He called me to tell me he was resigning from the union.

Q. Wasn't the first thing he said -- he asked you whether he could return to work?

A. He asked me if he could return to work. I answered to him, I said I can't tell you what to do. No, I can't tell you to do that.

Q. I am a little confused. You said you can't tell him what to do?

A. He said also in that statement, I will resign from the union. I said I can't tell you to do that.

Q. But Mr. Gleason, you state now that -- and you stated in the affidavit -- that you can't tell him what to do. At this point did he have any alternatives as far as you are concerned. Was he not locked out?

MR. GALLAY: Objection.

Argumentative?

JUDGE HERMAN: Overruled. Answer  
the question.

A. He was locked out.

Q. So in effect he had no alternatives at that point,  
did he?

MR. GALLAY: Objection

JUDGE HERMAN: Overruled.

A. He had no alternatives to what?

Q. As far as returning to work?

A. He was locked out.

Q. After this conversation did Mr. Philipps then come  
in to see you?

JUDGE HERMAN: Before you get  
to that, let's get a little more on this telegram. So he was  
locked out, and how did the discussion of the telegram get  
into the conversation?

223

A. I'll have to refresh my memory on that and look in  
here again. He said what would happen if he sent a telegram  
to the union resigning his membership.

JUDGE HERMAN: What was your  
reply?

A. I said you would have to show me a copy of your  
resignation, whichever way you handle this, --

JUDGE HERMAN: He would have  
to show you a copy for what purpose?

A. Well, he would have to show me a copy of establish  
the fact that he did resign.

JUDGE HERMAN: For what purpose?



A. Because there was a lockout, and there was a strike on unions party against the bargaining unit of the Metropolitan Funeral Directors Association.

JUDGE HERMAN: What would his resignation from the union accomplish?

A. Well, the telegram would be indicative of the fact that if there was any reprisals and so forth he would be protected against those reprisals or fines.

JUDGE HERMAN: What would you have to do with that?

A. I wouldn't have to do anything with that.

JUDGE HERMAN: What did you have -- I mean when you say he would have to show you the telegram for what purpose?

224 A. He would have to show me the telegram that he resigned from the union.

JUDGE HERMAN: Why was it -- why did you want to know if he resigned?

A. Well, because why should I let him back to work.

JUDGE HERMAN: You mean the resignation had something to do with his coming back to work?

A. The resignation had something to do with his coming back to work, no. I said -- if he wanted to resign from the union, that was within his own province. That was not for me to influence him to do this. This was something that he wanted to do, but I wouldn't accept him back unless he showed me a telegram.

JUDGE HERMAN: All right.

BY MR. FRIEDMAN:

Q. Did there then come a time when Mr. Philipps came into your office after this conversation?

A. Yes, he did.

Q. And did he bring with him a copy of a telegram?

A. In fact he came in and he didn't have the copy of the telegram. And he had a receipt from the Western Union. So I said you can't return to work until you bring a copy of the telegram. And he went back and he got a certification and then made a statement of the content of the telegram and signed it.

225

Q. With regard to that signing, in effect was this the actual telegram that he sent?

A. Yes.

Q. And you stated the telegram said what, as you recall the telegram was to what effect?

A. To the effect that he sent it to Mr. O'Keeffe, the president of the union, and I hereby resign from Local 100, something to that effect.

MR. FRIEDMAN: I would ask to have this marked as General Counsel's Exhibit 7.

(Telegram marked as General Counsel's Exhibit 7 for identification.)

MR. GALLAY: We will stipulate what is being marked as General Counsel's Exhibit 7 is a copy of the telegram sent by Mr. Philipps to Mr. O'Keeffe notifying Mr. O'Keeffe of Mr. Philipps' resignation, and that a copy of this was shown to Mr. Gleason.

MR. FRIEDMAN: I would offer it into evidence, Your Honor.



JUDGE HERMAN: So stipulated.

Do you have any objection to it's --

MR. GALLAY: No objection.

JUDGE HERMAN: Received in evidence.

(Document marked into evidence as General Counsel's Exhibit 7.)

BY MR. FRIEDMAN:

226

Q. Mr. Gleason, what did you then do with the copy of the telegram that you were shown by Mr. Philipps?

A. It was a statement of his telegram signed by him. It was not a copy. He indicated in his statement what he had written into the telegram. Or what he had sent in the telegram. And I took that and put it -- that in his personnel file. And he also had a certification from the Western Union that this telegram was sent.

Q. And what did -- did he return to work?

A. And then he returned to work.

Q. Again, can you place this in time relative to the beginning of the lockout, the end of the lockout?

A. It could be within two days.

Q. Of the beginning?

A. Of the beginning of the lockout.

Q. And did they then continue -- Mr. Gallagher and Mr. Philipps continue to work throughout the lockout?

A. They did.

Q. Now, could you tell us, was there any particular reason why Mr. Gallagher and Mr. Philipps were allowed to return to work during this lockout --

A. I can't hear you.

227

Q. Would you tell us, is there any particular reason why Mr. Gallagher and Mr. Philipps were allowed to return to work on the first or second day of the lockout, when the two Mr. Connellys were not allowed to?

\* \* \*

A. This was a labor dispute. And we, in the Metropolitan Funeral Directors negotiating committee took the stand that a strike against one of our members which the union had struck was a strike against all. And then the men were suspended. Now, the Connellys chose not to come back to work. And the other two men resigned. And so since they resigned, they were not members of the union.

228

Q. And therefore they could return to work?

A. And not because they were members of the union could they return to work, but because that there was a strike against our negotiating committee group.

Q. But --

A. It was not only a lockout, it was a strike.

Q. If the two Connelly's resigned, would they have been allowed to return to work?

A. That's speculation. I don't know, they didn't resign.

Q. Had the company set up any policy on that?

A. No policy.

Q. There was no other reason on such as bad employees or anything else?

MR. GALLAY: Objection

JUDGE HERMAN: Overruled.

\* \* \*



A. No. None of my men are bad. I liked them all very well.

\* \* \*

BY MR. FRIEDMAN:

Q. Mr. Gleason, on just one last point. You gave the date of the original notification of the -- that you had notified your employees of the lockout on the 13th of October. If you would look at this first page of the document you have identified as --

A. I noticed that. I was in error on that. I had 14th, and it was the 13th.

Q. Would that be -- in other words Saturday, the 13th?

A. Yes. Otherwise October 14th would be a Sunday.

MR. FRIEDMAN: I have no further questions.

A. That's why I remember the -- it as being closer to Mr. O'Keeffe's birthday.

\* \* \*

BY MR. GALLAY:

Q. Mr. Gleason, I can't resist asking you how you relate events to Mr. O'keefe's birthday?

A. Well, actually we were invited into the caucus room and Mr. O'Keeffe was having a little birthday party with his family and his associates and so forth. And when we went into the caucus room I might also note that we saw the picket signs there.

Q. Do you recall on what day this was?

A. This was on Mr. O'Keeffe's birthday.

Q. Do you remember what day?

A. That must have been the 11th of October.

Q. Was it the last day of negotiations?

A. It was the night before the last day of negotiations.

\* \* \*

235 Q. Mr. Gleason, you were on the Labor Relations Division Negotiating Committee, is that correct?

A. That's correct.

Q. Are you aware of whether the union was amassing a strike fund?

A. Oh, yes.

Q. How did you learn about that?

A. Well, I learned about it from my employees. They indicated to me that they were paying into the strike fund, that the negotiations would be up in October, and they were preparing for a possible strike. And they were raising funds for this.

Q. You testified Mr. Philipps was the shop steward, and he was collecting the monies?

A. And he was collecting the monies.

\* \* \*

Q. Mr. Gleason, in the discussions held by the members of the Metropolitan Funeral Directors Association, Labor Relations Division Negotiating Committee, was there discussions as to why a lockout was to be undertaken?

236 A. As a defensive counteraction against a strike. Three members of our labor negotiating group were being struck. I think it was McMannis, I believe the other was Jeffer Nieberg.

\* \* \*



237

Q. Is it fair to say, Mr. Gleason, that during the deliberations of the association members which led to the lockout, that they agreed that they did not want to support a strike against their fellow members?

A. Yes.

Q. And that is why they locked out?

A. That's right.

Q. Has this anything to do with the fact that you allowed people who had resigned to come back to work?

A. Yes.

238

Q. Would you explain that, please?

A. Has it anything to do with the fact that --

Q. With the decision --

A. -- to allow the people to come back to work.

Q. Who had resigned?

A. Yes. Well actually the group that were being struck by the union had pickets out in front of their place, and some of our people -- employees were assigned to picket duty. And we decided that we were going to support our members, and -- that was cause for a lockout.

Q. And those people in your employ who were no longer members, were they supporting the strike against the other members who were striking?

A. Oh, yes, definitely.

Q. After they resigned from membership?

A. After they resigned from membership, I don't know whether they were collecting any more at that point.

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REDIRECT EXAMINATION

BY MR. FRIEDMAN:

239 Q. Just picking up on something that you had just said, talking about the purpose -- the defensive counter action, one of these was to defy -- to deny the union the strike fund, was it not?

In other words, the idea that by lockout, you would deny the union strike fund which they could use for those employees who were on strike?

A. It wouldn't deny anything. It would just spread it out.

\* \* \*

240 Q. Do you have any knowledge of any of your employees picketing during their working time or was it during their own hours?

A. They would be doing it on their own hours, I am sure.

Q. Going back to a reference that you made to the meeting on the 13th of October, in which you informed the employees that they were locked out, I believe you said you told the employees that you had decided to take counter action?

A. Defensive counter action.

Q. And as -- was that all that there was in that sentence or did you go further at that point?

A. I didn't go any further. I said that was the statement. We decided to take defensive counter action. In fact the whole statement is in my statement, that you are notified of your suspension.

241 Q. Did you not in fact actually say that the members of the Association Labor Relations Division were going to take defensive action by closing our shops to union members?

A. Yes.



Q. What was what you said?

A. Yes.

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JUDGE HERMAN: Just a minute, Mr. Gleason, I'd like to ask you gentlemen, does the contract, the expired contract have a check of clause?

MR. GALLAY: It does.

JUDGE HERMAN: Well, then I would like to ask Mr. Gleason, were any of the other employees who were in the bargaining unit other than the licenses funeral directors members of the union?

THE WITNESS: If I understood your question, Judge, you mean any other employees -- just funeral directors -- that were --

JUDGE HERMAN: This unit includes, as I gathered embalmers, undertakers, possibly other employees?

THE WITNESS: Yes.

JUDGE HERMAN: Of yourself?

THE WITNESS: Not other employees. Just funeral directors and embalmers.

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JUDGE HERMAN: All right. And you employed such employees?

THE WITNESS: Yes.

JUDGE HERMAN: Were any of them members of the union?

THE WITNESS: Oh, yes, Four of them were members of the union.

JUDGE HERMAN: These four you're talking about are licensed funeral directors. Aren't there --

MR. GALLAY: Your Honor, if I may, the term embalmer and undertaker have been in misuse for many, many years. The license which is now given is funeral directors and the -- and it included all of the functions which previously had been described as undertaker --

JUDGE HERMAN: Then the answer to my question is that Mr. Gleason employs no embalmers -- no employees who were members of this unit other than the licensed funeral directors.

MR. GALLAY: That's correct.

THE WITNESS: Yes.

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\*\*\*I think General Counsel has stated on the record that it's -- that in the absence of this motivation element that we are not taking -- attacking the lockout with regard to timing or with regard to impasse or any of these things. And I think it therefore becomes a mute point.

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260

ROBERT GALLAGHER,  
called as a witness and, having been first duly sworn by the Officer, was examined and testified as follows:

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# DIRECT EXAMINATION

BY MR. GALLAY:

Q. Mr. Gallagher, by whom are you employed?

A. Martin A. Gleason, Inc.

Q. How long have you been employed by Martin A. Gleason?



A. Since June of 1969.

261 Q. During the course of your employment have you ever been a member of Local 100?

A. Yes.

Q. Were you employed on October 13, 1973 by Gleason?

A. Yes, I was.

Q. Did you work that day?

A. I did.

Q. Did there come a time you were called into Mr. Gleason's office?

A. Yes.

Q. Did Mr. Gleason speak to you and anybody else who was assembled there on the 13th?

A. Yes, he did.

\* \* \* \* \*

262 BY MR. GALLAY:

Q. First before answering the question, did Mr. Gleason speak extemporaneously or from notes?

A. He spoke from notes.

Q. Did you ever see what he was reading from?

A. Yes.

Q. Would you describe what he was reading from?

A. It looked like a yellow lined tablet similar to the one you have in — there on the table.

Q. Similar to what is called a legal pad?

A. Right.

Q. Tell us what Mr. Gleason said?

A. Well, he said that due to the fact that the union had struck three members of the Metropolitan Funeral Directors Association, that the Metropolitan, of which he was a member, was taking defensive action, and they wouldn't be —

they wouldn't be sit and be struck one by one, but they were going to take action to defend themselves. And therefore, that all of the employees belonging to the Local 100 were dismissed as of the end of that shift, October 13, 1973. And that he was sorry that this action was taken. But he felt compelled to do it as a matter of defending his business.

263 He said he was reading from a prepared text and he was going to limit his comments to that which he had prepared.

Q. Did anyone else during that meeting -- did anyone else speak during that meeting?

A. Well, when he was finished with the prepared text, some of us asked questions.

Q. Would you tell us, as best you can, in chronological order who said what after Mr. Gleason completed his statement?

A. Well, I wanted to know right off the bat, I expressed my displeasure with the entire situation and I told him I wanted to finish -- continue work, I did not want to be out of work for any length of time.

I asked him if there's anything I could do to continue working. And he refused to comment. He said I cannot comment on anything like that. He says as I told you I am sticking to my prepared text, I cannot comment. He said the only thing that I will speak about if you want to know -- be brought up to date about union negotiations, of which I am a member of the negotiating committee. But he says that's the only thing I'll speak about.

Q. Aside from the discussions about the negotiations, was there any further conversation that you can recall?

A. No. It was very, very limited to exactly what he had on the text, and  
264 a few questions were asked him about what seemed to be the breakdown in negotiations, what was the point upon which they could not agree.

Q. As part of the discussion on the negotiations, did somebody call a number to get a recording message?



A. Yes. There was a number, I believe that the Metropolitan had a recording, and that was called during that meeting.

Q. Did Mr. Gleason make any comment at that meeting with regard to the option employees had to resign from the union?

A. No. He refused to comment on anything relating to that at all. Or relating to anything beyond what he had on a prepared text — sheet of paper.

\* \* \* \* \*

265 Q. Did you telephone Mr. Gleason after the meeting?

A. Yes, I did.

Q. Approximately when in relation to the meeting on the 13th did you telephone him?

A. When I got home.

Q. Would you tell us what Mr. Gleason — what you said to Mr. Gleason and what he said to you?

A. Well, I carried the request I made during the meeting, I wanted to continue working. And again over the phone he says I cannot talk about that at this time.

266 So I said to him, look, I says, the union — I do not agree with the union's stand in this matter, I don't care whether I belong or not, I want to get out of the union, I want to continue working. He says as long as you brought it up, I can speak about it, if you don't want to belong to the union, he says, if you want to sever your membership in the union, he says you can report to work.

Q. Had you already informed Mr. Gleason that you made your mind up to resign from the union?

A. Well, when he refused to speak about my continuing to work, he said well I will get out of the union, I will become a non-union member if that will continue me in work.

So he said now I can talk about you coming back to work.

Q. And what did he say.

A. He said, well, he said you will have to resign from the union in an official way, and bring the copy of your resignation that you sent to the union.

Q. Did he tell you why he wanted a copy of the resignation?

A. Well, he said that a member of a union cannot work during a strike or a -- in other words, an action of the kind he took, the union members could not work.

Q. Did he explain it in any detail beyond that?

A. No.

\* \* \* \* \*

267

# CROSS EXAMINATION

BY MR. FRIEDMAN:

Q. Mr. Gallagher, going back to this -- I think one of the last things you said -- I believe you said you were asked if Mr. Gleason had told you why you should bring in a copy of the resignation?

A. Yes.

Q. What was the answer he gave you?

A. In other words, I couldn't belong to the union and work during this action, that the action as taken by him on the -- at the meeting I had just attended before calling him, and he said as a non-union member I couldn't work.

268

Q. When you originally -- well on this phone call when





you said you repeated your request to be able to go back to work?

A. Yes.

Q. And what was his response at that point?

A. He said he couldn't speak about that, that topic, because I cannot talk about that with you.

Q. And then what did you say at that point?

A. Well, I wanted to push the issue. I says I really want to come back to work. I says I don't want to be out of work because of this union management disagreement.

I said -- I said I will quit the union, I will get out of the union, and go back to work as a non union member.

Q. And at that point he then --

A. He says, well, as long as you brought that up, he says now I can talk.

Q. Had Mr. Gleason said anything to you that gave you this idea of making a proposal about resignation would enable you to go back to work.

A. No.

Q. Well, did you state on direct that at the -- going back for a moment now to the original, the meeting on the 13th, that he stated to you that all employees belonging to Local 100 were dismissed at the end of the shift?

A. Yes.

Q. Is that what he said?

A. Suspended or dismissed, words to that effect.

\* \* \*

Q. I believe you mentioned on direct also that you had given a statement to the Board agent, is that correct?



A. That's correct.

Q. And did you later give a copy of that statement to the company?

A. Yes.

273

Q. Could you tell us how it came about that the company got a copy of your statement?

A. Mr. John Gleason asked me to write for a copy of my statement to the board.

Q. Would you just tell us what he said to you on that?

A. He said he would like to ask me a favor, if I would write to the National Labor Relations Board for a copy of the statement that I gave to their investigator.

But I was to understand that it was voluntary act, if I didn't want to do it, you know, he --

Q. He told you that?

A. Yes. He wouldn't hold anything against me.

\* \* \*

275

ALBERT PHILIPPS,  
called as a witness and, having been first duly sworn by the Officer, was examined and testified as follows:

\* \* \*

276

DIRECT EXAMINATION

BY MR. GALLAY:

Q. Mr. Philipps, by whom are you employed?

A. Martin A. Gleason, Inc.

Q. How long have you been employed by Martin A. Gleason, Inc.?

A. Since January 13, 1961, as a full-time employee.

277

Q. During the course of your employment, have you ever been a member of Local 100?

A. I have been, yes.

\* \* \*

Q. Do you recall approximately when you joined Local 100 or its predecessor union?

A. Well, I had belonged to Local 407, which later became Local 100. And I had to join that union soon after I was hired.

Q. Sometime after you were hired in 1961?

A. Yes.

Q. Did you attend a meeting in Mr. Gleason's office on October 13th, 1973?

A. I did, yes.

Q. Did Mr. Gleason speak to the people who were assembled?

A. He did, yes.

\* \* \*

278

Q. How did the meeting begin?

A. Well, very somberly because I could tell immediately that it was -- going to be so -- a drastic announcement here, and it was a shock when it came.

Mr. Gleason was reading from a prepared tablet that was in front of him, and he told us that it was a prepared text.

And he read off the procedures of the negotiation up to that point. And told us just about where we stood, and where they stood.

And they had reached an impass and they were no longer negotiating. And he told us that, as I recall, he and his



members of the Association were not going to sit by and pay for your strike.

In other words, there was a selective strike planned. And those who were going to go back to work were going to have to pay for the fellows who were going to go out on strike.

Who they were going to be, we didn't know at that time. And he and the members were not going to sit by and pay for this thing, so they were taking defensive action.

And by that defensive action, they were going to -- at the end of this working day you are dismissed. That's about it.

279

Q. At any time did Mr. Gleason mention the word resigned or resignation from the union during that meeting?

A. No, sir, he did not.

Q. At any time during that meeting did the subject of sending telegrams of resignation to the union come up?

A. No, sir.

Q. Did you hear Mr. Gallagher ask any questions?

A. Yes. He was quite concerned. And it would have been a question I would have asked myself because I, too, did not -- was not in a financial position to accept an extended strike.

And I wanted to know what my alternatives were, if any.

Q. Did you ask that question at that meeting?

A. I did.

Q. What was Mr. Gleason's response?

A. As far as I can remember there were no responses at that meeting. He could not discuss it with us.

Q. After the meeting, did you have occasion to call Mr. Gleason?

A. After the meeting I went home, and told my wife what had happened. And we wait for three and a half hours discussing our situation.

280 We had just completed buying the house we live in, the negotiation for the loan and all, and we felt we were in a pretty shaky position.

And if there was anything at all that we could do, we would take those steps to do it.

And at ten thirty I decided without even discussing it any further with any wife, I said I am going to call John Gleason and see what I can -- what can be done.

And I called him up, and I asked him, I said I would like to go back to work. He said well, do you know what you have to do?

I said yes, I do. I believe I have to sever myself from Local 100. I was scheduled to come in to work the following morning, Sunday morning at nine o'clock.

And I told him that I would be in the next morning, and when I got there I would send a telegram to the Local 100, and sever myself from the union in formal manner.

\* \* \*

281 \*\*\* Mr. Phillips, have you ever been the union shop steward for Martin A. Gleason, Inc.?

A. I was, yes.

Q. Were you at the time of your resignation the shop steward?



A. I was.

Q. Prior to your resignation had you been collecting strike funds from employees?

A. I was.

282

Q. Did Mr. Gleason tell you why he wanted you to bring a copy of a telegram before you came back to work?

A. He did not, no. But I thought this would be good for my own records anyway.

Q. Did he, in fact, ask you to bring proof of your resignation?

A. Yes, he did.

Q. Did you agree?

A. Beg your pardon?

Q. Did you agree?

A. Yes, sure.

Q. Mr. Philipps, did you tell a representative of the National Labor Relations Board the sum and substance of what you have testified to here today?

A. I did.

Q. Did you give an affidavit to the National Labor Relations Board at the time you told them?

A. I did, yes.

Q. Were you asked by Mr. Gleason to obtain a copy of the affidavit for him?

A. Yes, He did. And I got it.

Q. Would you tell us what Mr. Gleason said to you when he asked you to obtain a copy?

A. Well, he asked me if I would -- he says I didn't have to do it but if I would, he would appreciate it, if I would write

283

to Mr. Goldberg and get a copy of our conversation.

\* \* \*

### CROSS EXAMINATION

284 Q. All right. Now, you stated that when you called  
285 Mr. Gleason that evening, I believe you said during the evening,  
is that correct?

A. Ten thirty, right.

Q. You stated to him that you would like to go back to  
work; is that correct?

A. I did.

Q. And you said that his response was do you know what  
you have to do?

A. No. He said you know what you have to do, Put  
it in a question form, you know what you have to do? And  
I said yes, I did.

\* \* \*

Q. So that when you -- when Mr. Gleason said to  
you do you know what you have to do or you know what you have  
to do, question mark, was there any particular \*\*\*

\* \* \*

286 \*\*\*know what I have to do.

Q. And then what was said at this point? What was his  
-- you then said, I believe you stated on direct, you said I  
believe I have to sever myself from Local 100?

A. Yes.

Q. What was his response to that?

A. He said all right, you come in to work tomorrow  
morning, nine o'clock and you can send the telegram then.

Q. Had you suggested the telegram or was that the --



A. No. I suggested the telegram.

Q. By the way, when you came in with that telegram what did you do with the telegram?

A. I made a copy of it, and I gave him the copy I brought back, and kept a copy for myself.

Q. This is an actual copy of the telegram?

A. Yes. A photostat of it.

Q. It wasn't just a receipt or a --

A. Oh, yes. It was some kind of a yellow receipt that I had sent a telegram.

Q. Was there anything that had the actual language of the telegram on it?

A. Gee, I don't remember. I don't recall.

\* \* \*

291 Q. Now, following his reading from the prepared text, do you recall following Mr. Gleason reading from the prepared text? Do you recall if there were any questions asked?

292 A. Well, the only question I remember was Bob Gallagher posing the question that I had intended asking myself, and that was what our alternatives were, if anybody new. And we were told that that phase of the situation could not be discussed.

Q. He did just say you had no alternatives, did he?

A. No.

Q. He didn't?

A. No.

Q. He said it couldn't be discussed. Did he at any time indicate anything about calling back later that night?

A. No.

Q. In light of the fact that he said he couldn't discuss this topic, was there anything that induced you to believe some headway could be made by calling back later that evening.

A. Well, I have always looked upon this with John Gleason -- I have known him all my life, I went to grammar school with him.

And I felt I could talk to him any time I please. And he has never refused me. And I thought this situation was grave enough to call him at any hour that I deem necessary.

\* \* \*

294

MARTIN A. GLEASON,

a witness, having been previously sworn, testified as follows:

295

DIRECT EXAMINATION

\*\*\*the question of resignations and/or sending of telegrams to the union?

A. Absolutely not.

Q. All right.

A. In fact, I was the only one who talked at that meeting -- the only one who led the discussion at that meeting from the management side.

Q. Mr. Gleason, with regard to your telephone conversation with Mr. Gallagher, which of you first made reference to resignation from the union?

A. Mr. Gallagher did.

Q. What did he say?

A. Well, he said I am going to send in a notification of --

Q. Resignation?

A. Resignation.



Q. With regard to your conversation with Mr. Phillips, who first mentioned resignation from the union?

A. Mr. Philipps did.

Q. Was there any reference to sending of a telegram?

A. Yes, there was.

296

Q. Who made first reference to sending of a telegram?

A. Mr. Philipps made the reference.

Q. In any of your conversations with the employees by the -- covered by the agreement of Local 100 did you say anything -- was anything said -- withdrawn.

I don't recall whether I asked you this earlier, did you remain a member of the negotiating committee after the lockout began?

A. After the lockout, yes.

Q. Did you attend all these sessions?

A. I did.

Q. Did you have any motivation for locking out your employees other than the one you have testified about earlier?

A. You know, come to think of it, my mind is a little more refreshed in that regard, we were motivated to lock out the employees first in support of our members. And then also to bring an economic pressure upon the union in that regard.

\* \* \*

298

#### RE-CROSS EXAMINATION

Q. (By Mr. Friedman) Mr. Gleason, I believe you just stated one of the motivations was to bring economic pressure on the union, is that correct?

A. Yes.

Q. And by that, did you mean to deprive them of the

strike assessments?

A. That's right.

Q. And was in fact the reason that you felt you could take Mr. Philipps and Mr. Gallagher back, due to the fact that they would not be contributing strike assessments since they were no longer members?

A. Yes, that would be one of the reasons.

\* \* \*

326

# MICHAEL GUTTERMAN

a witness, called by and on behalf of Respondent, having been duly sworn, testified as follows:

\* \* \*

## DIRECT EXAMINATION

Q. (By Mr. Gallay) Mr. Gutterman, are you a principal in the Gutterman Inc. Funeral Home business?

A. Yes, I am.

Q. What position do you hold?

A. I am the secretary.

Q. How long have you been a principal, and actively engaged in the business?

A. About 13 years.

Q. How many branches does Gutterman operate?

A. We have three individual establishments. Three establishments.

Q. Where are they located?

327

A. In Manhattan, Brooklyn, and Rockville Center, New York.

Q. Do you have employees who are subject to the Local 100 funeral director agreement at each location?



A. Yes, we do.

Q. Do you know Frank Marinaro?

A. Yes, I do.

Q. Has he been an employee of Gutterman's for the past couple of years?

A. Yes, he has.

Q. Approximately how far back does his employment go?

A. I believe about four years.

Q. To your knowledge, has he been a shop steward?

A. Yes, he has.

Q. Approximately over what period of time?

A. I think over three years.

Q. Is he currently the shop steward?

A. Yes, he is.

Q. Was he during the period of the negotiations and lockout?

A. Yes, he was.

Q. To your knowledge, was he also on the negotiating team?

A. Yes, he was.

328

Q. Was this known to you as of October 13, 1973?

A. Yes, it was.

Q. Mr. Tolomie is also an employee of Gutterman's

A. Yes, he is.

Q. What capacity?

A. Funeral Director.

Q. Approximately how long has he been a funeral director, if you can recall?

A. I believe less than two years.

Q. Prior to that, was he employed by Gutterman's?

A. Yes.

Q. In what capacity?

A. As a trainee.

Q. For approximately how long?

A. I believe about six years.

Q. Six years as a trainee?

A. About that.

Q. Mr. Gutterman, did there come a time on or about October 13, 1973 when you met with Mr. Marinaro and Mr. Tolomie?

A. Yes.

Q. Was it on that date, October 13, 1973?

A. Well, it was actually after midnight on the 14th, October 14th.

329

Q. If your statement says it was 11:30 p.m. on the 13th, is that correct or incorrect?

A. Well, I'm about an hour off.

Q. Do you normally work that late?

A. No, I don't.

Q. Under what circumstances did you stay at the particular funeral establishment that late that night or early morning?

A. Well, I came to the establishment with a specific task in mind.

Q. Which establishment are we talking about?

A. 1970 Broadway.

Q. What task was that?

A. To notify whoever was on duty that we were initiating a counter action to notify them not to report to work until further notice.



Q. Would you tell us what you said to Mr. Marinaro and to Mr. Tolomie and what if anything they said to you?

A. Well, they had just come in from a removal, and after they finished their business, what they had to do in connection with that, I asked them to come together, I wanted to talk to them.

I said to them, I said, "Our firm has decided to initiate a defensive counteraction."

At this point, Mr. Marinaro interrupted me, and, "you mean we're locked out?" he said.

330

I kind of suspected something which I saw Stuey here-- when I saw Stuart, referring to my brother, here an hour before.

I continued to speak to them. I said that this was nothing personal, we hope that it wouldn't have any hard feeling in the future, that three years ago they had gone on strike, whether they wanted to or not, they were instructed to do it, and they had done it.

I said that we were now following the directive of our negotiating committee in deciding upon this action.

I told them that no members of the local can continue to work and not to report to work.

I said -- I asked them if I wanted -- if I should notify others, or will he, as shop steward do that. And Mr. Marinaro said that he would take care of that, notify the other men.

Then Mr. Tolomie said, "Well, I may as well give you our keys." They had keys to the building, and I accepted them.

By this time, we were walking toward the side door, and they gave me their keys.

That was the end of the discussion. They walked out.  
I locked up the building.

\* \* \*

Q. Your brother Stuart was on the negotiating committee, was he not?

A. Yes, he was.

Q. He continued to participate in the negotiations after the lockout began?

A. Yes, he did.

Q. By the way, did you use the term "lockout" during the --

A. No, I did not.

Q. What term did you use?

A. I said "defensive counter action."

Q. Where did you hear that term?

A. We had discussed -- my brother and I had discussed what exactly to say to the men in notifying them of the step we were taking, and this was the term we had been -- decided to state.

Q. Is Gutterman's still a member of the Labor Relations Division of the Metropolitan Funeral Directors Association?

A. Yes.

Q. Is the Labor Relations Division still authorized to represent Gutterman's in dealings with Local 100?

A. Yes.

\* \* \*

333

#### CROSE-EXAMINATION

Q. (By Mr. Friedman) Mr. Gutterman, what was the specific language you used when you informed Mr. Marinaro, Mr. Tolomie, that the company was going to engage in a defensive counteraction?

Would you tell us what did you say?



A. That's just the term I used.

Q. What was the entire sentence or sentences?

A. That our company has decided to initiate a defensive counteraction.

Q. Did you not go further at that time and say, "We had to engage in a defensive counteraction and not employ members of Local 100 for the duration of the strike against other members?"

A. I was interrupted at that point.

Q. But did you say that?

A. I said, "No members of the Local 100 would be allowed to work."

\* \* \*

343

MR. GALLAY: Your Honor, during an off the record discussion with counsel for the General Counsel and representatives of the charging party.

I approached the subject of three stipulations which if acceptable would avoid the necessity of my putting on further witnesses.

I would like to try to take these item by item and see if we can so stipulate with your permission.

JUDGE PERMAN: Very good.

MR. GALLAY: First of all, your Honor, I would like to have marked as a Respondent Exhibit a single sheet of paper apparently on the letterhead of Local 100 Service Employees International Union, dated October 18, 1973 and this would apply to all of the cases, not to any particular Respondent.

It has previously been shown to the counsel for the General

Counsel and the union representatives.

I do not believe they have any objection to the admission of this document, although I understand that counsel for the General Counsel reserves his rights with regard to its relevancy and its materiality.

344

MR. FRIEDMAN: Your Honor, in this particular document we are not even disputing relevance.

We will stipulate to its authority.

MR. GALLAY: I therefore move for its admission.

JUDGE HERMAN: Well, you have numbered Exhibits for each Respondent independently and if you want to put this in as one that is applicable to all the cases we better just call it Respondent's Exhibit 1.

So received into evidence as Respondent's Exhibit 1.

(Whereupon, above referred to document was received into evidence as Respondent's Exhibit 1, as of this date.)

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\*

JUDGE HERMAN: So stipulated.

MR. GALLAY: The second point, your Honor, deals with statistics with regard to the number of funeral homes that participated in the lock out.

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I would request that the General Counsel join in a stipulation to the effect that there were approximately 18 employers, operating approximately 45 funeral establishments that locked out employees since on or about October 13, 1973 up to and including approximately December 13, 14 or 15, depending upon when the employees came back to work.



That there were approximately 14 members of the labor relations division of the Metropolitan Funeral Directors Association, who did not lock out their employees.

\* \* \*

MR. GALLAY: And that as we had heard there were three funeral establishments struck by the union, I think the date of the strike was October 12, 1973.

Can we have such a stipulation?

MR. FRIEDMAN: I would so stipulate.

\* \* \*

346 JUDGE HERMAN: Very good, so stipulated.

\* \* \*

349 MR. FRIEDMAN: I was thinking somewhat of another stipulation.

The point I was thinking of, that is in light of the fact that we have apparently some members of the association, some members of the association who locked out and some that didn't.

If we could enter into a stipulation for the mechanics as to whether the committee proposed it and that the owners of the establishments made the decision or whether the committee made a decision that half the people would lock out and half wouldn't, is there a way we can stipulate as to the way the method of division occurred?

\* \* \*

MR. GALLAY: Your Honor, in response to Mr. Friedman's query, I can state for the record and join in a stipulation to the following effect.

The question of a lock out came up in deliberations by the negotiating committee for the labor relations division of the Metropolitan.

When it became apparent we might have a selective strike, the members of the negotiating committee made their own decision based upon the discussion that was had during the caucus, members of the negotiating committee were asked to call other employers who were not members of the negotiating committee and discuss with them their legal right to lock out under the circumstances.

When the strike began each employer was left to his own as to whether he would or would not lock out and there was no formula or formulation by which X-number would and X-number would not.

Members of the labor relations division themselves did not lock out.

351

That is of the negotiating committee of the labor relations committee did not lock out one member locked out and then changed his mind for reasons best known to him. During the deliberations there was much about the fact that in 1970 when there was selective strike against some members, others didn't come to their support and that was the basic reason that some decided to and some decided for reasons again best known to themselves not to.

I don't know if that is totally responsive, but that is what took place.

MR. FRIEDMAN: Fine, I think that clarifies it.

\* \* \*

MR. GALLAY: Your Honor, based upon an issue you raised in attempt to clarify the record, I would like to explain for \*\*\*

\* \* \*



355

AUGUST TOLOMIE,

called as a witness having been first duly sworn by Judge Herman,  
was examined and testified as follows:

\* \* \*

DIRECT EXAMINATION

Q. (By Mr. Friedman) Mr. Tolomie, by whom are you employed?

A. Gutterman's Incorporated at 1970 Broadway.

Q. In what capacity do you work?

A. As a licensed funeral director for the State of New York.

Q. How long have you been working for them?

A. For 12 years.

Q. And are you also a member of Local 100?

A. Yes, sir.

Q. About how long have you been a member of that organization?

A. 12 years.

356

Q. Now, Mr. Tolomie, during the course of your employment at Gutterman's did there come a time when you were instructed not to report for work?

A. Yes.

Q. And would you tell us when that was?

A. October 13, 1973.

Q. And would you tell us who gave you these instructions?

A. Mr. Michael Gutterman.

Q. Could you relate for us the circumstances of this?

A. Myself and Mr. Frank Marinaro had just come back from making a house removal in the Bronx.

We brought the body into the building and put it into the preparation room and came upstairs and were ready to leave the building when Mr. Gutterman informed us that he had something to tell us.

Q. Would you be able to place this in time?

A. This was about 12:45 A.M. and it took place in the back office of Gutterman's on 1970 Broadway.

Q. Could you tell us, then, what was said by whom as the events transpired?

A. Mr. Gutterman had informed us that three years prior to this our union had asked us to go out on strike and that the Metropolitan Association of Funeral Directors had instructed them that they were to put their men on strike in sympathy for the strike that we had pulled against -- I think it was 3 or 4 homes in Brooklyn.

357

Q. And then what was said?

A. And this time he told us that the Association lawyers had informed them if we wanted to work, we send a letter to the union or a telegram, and one also to the Metropolitan Association stating that we were to resign from the union to work.

After the settlement we would rejoin the union without losing any benefits.

Q. And then what was said at this point?

A. At this point Mr. Marinaro had asked Mr. Gutterman who was to pay the fine if there was a fine enlarged against us from the union?

Q. What was the response?

A. His response to it was a shrug of the shoulders and he himself said he thought there would be no fine enlarged against us.



Q. Was anything further said during the course of this conversation?

A. Just that if we wanted to work we were to send the letter of resignation in to the union and to the Metropolitan Association.

Q. What did you then do at the end of the meeting?

A. At the end of the meeting I turned my keys which I held to the building in Manhattan and in Brooklyn, keys to a liquor cabinet in Manhattan, keys to a switch board in Manhattan, all of this over to Mr. Gutterman and told him I did not want the keys in my possession as I didn't want to have myself or any other persons that I worked with accused of being in the building while we were locked out.

Q. What did you do then at this point?

A. We left the building.

Q. Now, did you at anytime resign from Local 100?

A. No, I have not.

Q. And when did you return to work?

A. I believe it was a week before Christmas.

Q. Could you just tell us briefly how it came about that you returned to work?

A. The union and its members held a meeting at the hotel at LaGuardia Airport and it was voted on in a unanimous vote that we should return to work and we were told to go back to work.

Q. What were you told to do specifically, if anything, with regard to your employer?

A. To call and ask when we should return to work.

Q. And did you do so?

A. Yes, I did.

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-----X  
 LOCAL 100, SERVICE EMPLOYEES  
 INTERNATIONAL UNION, AFL-CIO

and

J.N. GARLICK FUNERAL HOMES, INC.

and

MARTIN A. GLEASON, INC.  
 -----X

Case No. 29-CB-  
 1743

Case No. 29-CB-  
 1743-2

#### STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Local 100, Service Employees International Union, AFL-CIO, herein called Respondent, J.N. Garlick Funeral Homes, Inc. herein called Garlick, Martin A. Gleason, Inc. herein called Gleason, and the General Counsel of the National Labor Relations Board, that:

1. Upon charges filed by Garlick in Case No. 29-CB-1743 and by Gleason in Case No. 29-CB-1743-2 on March 13, 1974, and served upon the Respondent on March 13, 1974, receipt of which charges is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 29, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations

Act, 29 U.S.C., Section 151, et. seq., herein called the Act and Section 102.15 of the Board's Rules and Regulations - Series 8 as amended, issued an Order Consolidating Cases and Complaint against the Respondent on July 24, 1974, together with a Notice of Hearing thereon. True copies of the aforesaid Complaint and Notice of Hearing were duly served by registered mail on the Respondent, Garlick and Gleason on July 24, 1974, receipt of which is hereby acknowledged by all parties.

2. (a) Garlick is and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of New York and maintaining its principal office and place of business at 1700 Coney Island Avenue, Brooklyn, in the city and State of New York and various other places of business in the New York metropolitan area where it is and has been at all times material herein engaged in providing funeral services and related services.

(b) During the past year, which period is representative of its annual operations generally, Garlick, in the course and conduct of its operations, derived gross revenues therefrom in excess of \$500,000 and purchased and caused to be transported and delivered to its places of business, coffins, urns, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its places of business in interstate commerce directly from states of the United States other than the state in which it is located.

3. (a) Gleason is and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of New York and maintaining its principal



office and place of business at 149-20 Northern Boulevard, Flushing, in the City and State of New York where it is and has been at all times material herein engaged in providing funeral services and related services.

(b) During the past year, which period is representative of its annual operations generally, Gleason, in the course and conduct of its operation, derived gross revenues therefrom in excess of \$500,000 and purchased and caused to be transported and delivered to its place of business, coffins, urns, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state in which it is located.

4. Garlick and Gleason and each of them are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act.

5. Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6. Respondent's Answer, heretofore filed herein shall be and hereby is withdrawn. All parties hereto waive the filing of answer, hearing, Administration Law Judge's Decisions, the filing of exceptions and briefs, oral argument before the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

7. This Stipulation, together with the charges, Order Consolidating Cases, Complaint and Notice of Hearing shall

constitute the entire record herein.

8. Upon this Stipulation and the Record as described in paragraph 7 hereof and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

#### ORDER

Respondent, Local 100, Service Employees International Union, AFL-CIO, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Stating to employees of J.N. Garlick, Inc., Martin A. Gleason, Inc., or any other employer that Local 100 will not accept resignations or threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100, except insofar as Respondent is entitled to inform employees of their obligations pursuant to a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(b) Threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and fail and refuse to do picket line duty at the premises of J.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc. or any other employer.

(c) Threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and return to work during a concerted



work stoppage or lockout.

(d) In any other manner, coercing or restraining employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Post immediately in conspicuous places at its office at 549 Broadway, Massapequa, New York copies of the Notice of Members attached hereto and marked "Appendix A." <sup>1/</sup> Copies of the said Notices to be furnished by the Regional Director for Regional 29, shall, after being signed by Respondent's representative, be posted immediately upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29, signed copies of said Notice for posting by Garlick and Gleason if they are willing, at places where they customarily post notices to their employees.

(c) Notify the Regional Director for Region 29, in writing, within ten (10) days from the date of this order, what steps have been taken to comply herewith.

9. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment

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<sup>1/</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, there shall be substituted for the words "Posted by Order of the," the words "Posted pursuant to a Judgment of the United States Court of Appeals, Enforcing an Order of the."

enforcing the order of the Board in the form set forth in paragraph 8 hereof. The Respondent waives all defenses to the entry of the decree, including compliance with the order of the Board, and their right to receive notice of the filing of an application for the entry of such judgment provided that judgment is in the words and figures set forth in paragraph 8 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order after entry of the judgment only to the extent that they have not already done so.

10. This Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it except that it is understood that the signing of this Agreement by the Respondent shall not be deemed to constitute an admission that it has violated the Act.

11. This Stipulation together with the other documents constituting the record as described in paragraph 7 hereof, shall be filed with the Board. The Stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the Stipulation, the Respondent will immediately comply with the provisions of the Order as set forth in paragraph 8 hereof.

LOCAL 100, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO

Signed at Massapequa, N. Y.  
this 26th day of August, 1974.

By: /s/ Richard O'Keefe, Res  
(Name and Title)

J. N. Garlick Funeral Homes, Inc.  
1700 Coney Island Avenue  
Brooklyn, New York



"APPENDIX A"

NOTICE TO MEMBERS

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT state to employees of J.N. Garlick, Inc., Martin A. Gleason, Inc., or any other employer that Local 100 will not accept resignations or threatening employees with fines or other penalties if said employees resign, tender resignation or seek to resign from Local 100, except insofar as Respondent is entitled to inform employees of their obligations pursuant to a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT threaten employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and fail or refuse to do picket line duty at the premises of J.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc. or any other employer.

WE WILL NOT threaten employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and return to work during a concerted work stoppage or lockout.

WE WILL NOT in any other manner, coerce, or restrain employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

LOCAL 100, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
(Name and Title)

THIS IS AN OFFICIAL NOTICE  
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's office, 16 Court Street, Brooklyn, New York 11241 Tel. # 596-5388, 3535.

\_\_\_\_\_



Signed at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 1974.

By: \_\_\_\_\_  
(Name and Title)

Martin A. Gleason, Inc.  
149-20 Northern Blvd.  
Flushing, New York

Signed at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 1974.

By: \_\_\_\_\_

APPROVAL BY THE GENERAL  
COUNSEL:

/s/ Joel H. Friedman 8/22/74  
Joel H. Friedman  
Attorney, Region 29  
National Labor Relations Board  
16 Court Street  
Brooklyn, New York 11241  
Counsel for the General Counsel

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 LOCAL 100, SERVICE EMPLOYEES :  
 INTERNATIONAL UNION, AFL - CIO, :  
 and Respondent :

J.N. GARLICK FUNERAL HOMES, :  
 INC. :

Cases Nos.  
 29-CB-1743 and  
 29-CB-1743-2

MARTIN A. GLEASON, INC., :  
 Charging Parties. :

Joel H. Friedman, Esq., Brooklyn, N.W., :  
 for General Counsel. :

Samuel D. Rosen, Esq., (Fellner and :  
 Rovins), New York, N.Y., for :  
 Charging Parties. :

Jerry Kronenberg, Esq. (Ehrlick & :  
 Kronenberg), Chicago, Ill. for :  
 United States Chamber of Commerce :  
 amicus curiae. :  
 -----X

[Dated 10/31/74]

#### DECISION

SAMUEL M. SINGER, Administrative Law Judge: On March 13, 1974, J.N. Garlick Funeral Homes, Inc. ("Garlick") and Martin A. Gleason, Inc. ("Gleason") filed separate unfair labor practice charges alleging that Local 100, Service Employees International Union AFL-CIO ("Union" or "Respondent") restrained and coerced their employees in violation of Section 8 (b) (1) (A) of the National Labor Relations Act. Based on those charges,



General Counsel through the Twenty-Ninth Regional Director on July 25, 1974 issued a consolidated complaint against the Union. At the outset of the hearing, held in Brooklyn, New York, on August 27, 1974, counsel for General Counsel moved for approval of a settlement agreement executed by Respondent and recommended by him on behalf of the Regional Director. Charging Parties have refused to join in the proposed agreement.

All parties were afforded full opportunity to be heard -- Charging Parties in opposition to the settlement stipulation and General Counsel in its support. <sup>1/</sup> Charging Parties were supported by the United States Chamber of Commerce, which was allowed to appear as amicus curiae. Leave having been granted to Charging Parties to file memoranda in further support of their positions, a joint memorandum was received from them on October 15, 1974. <sup>2/</sup>

Upon the entire record in this consolidated proceeding, and after careful careful consideration of the contentions of the parties, I find and conclude as follows:

A. The Settlement Stipulation and  
Charging Parties' Objections  
Thereeto

The complaint alleges that Respondent (by two of its agents) told employees of Garlick and Gleason in course of a strike called

<sup>1/</sup> Respondent did not personally appear, presumably relying on General Counsel to press approval of the settlement.

<sup>2/</sup> Submission of the memorandum was delayed by two requests to extend time filed by Charging Parties who were awaiting production by the Board of materials requested under the Freedom of Information Act. (infra, fn. 5).

by the Union (and a lockout put into effect by the Employers) that the Union would not accept resignations from their employees; and that Respondent threatened employees with fines and other penalties if they resigned (or attempted to resign), or returned to work during the strike, or refused to perform picket line duties.<sup>3/</sup> The proposed settlement agreement here -- a formal settlement subject to Board approval -- provides for cessation of the alleged unlawful conduct and for the normal affirmative action (posting notices) conventionally required by the Board. Additionally, Respondent agrees to withdraw its answer to the complaint, waives an evidentiary hearing, and, without admitting the commission of unfair labor practices, consents to the entry of a Board order and enforcement of the order by a judgement of an appropriate

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<sup>3/</sup> In a prior proceeding now pending before the Board (Consolidated Cases 29-CA-3602, 29-CA-3604, and 29-CA-3605) Judge Irving M. Herman in his Decision of July 30, 1974 found, inter alia, that Gleason (and another employer not here involved) violated Section 8(a) (1) and (3) of the Act by locking out their employees and conditioning their return to work upon their resignation from the Union. A third employer, also not here involved, was found to have violated Section 8 (a) (1) by informing locked-out employees that the only way they could return to work was by resigning from the Union. All three employers were members of a multi-employer unit covered by a recently expired collective agreement between an Employer Association and the Union.



Court of Appeals.<sup>4/</sup> Charging Parties' principal objections to the settlement stipulation are: (1) that it contains a "nonadmission" clause; and (2) that it does not provide a backpay remedy to compensate Charging Parties' four employees who were coerced from returning to work during the strike. Charging Parties raise no material factual questions.<sup>5/</sup>

#### B. Analysis and Conclusions

In Farmers Co-Operative Gin Association, 168 NLRB 367, the Board stated:

In reviewing ... objections, which the Charging Party believes clearly justify rejection of the settlement agreement, there are certain principles and policies that guide the Board in resolving its position in this difficult area. The Board has long had the policy of encouraging settlements which effectuate the purposes of the Act. Wallace Corp. v. N.L.R.B., 323 U.S. 248, 253-54. In considering settlements, the Board must weigh such factors as the risks involved in protracted litigation which may be lost in whole or in part, the early restoration of industrial harmony by making concession, and the conservation of the Board's resources. Moreover,

<sup>4/</sup> The Regional Director originally refused to issue a complaint and dismissed the charges on the ground that "a/suming arguendo that these statements /attributed to the Union/ were made, they relate/d/ only to the internal enforcement of union rules" lawful under Supreme Court decisions such as N.L.R.B. v. Allis-Chalmers Mfg. Co., 388 U.S. 175. (See Appendix B to Charging Parties' Memorandum). On Charging Parties' appeal to General Counsel, the Regional Director was administratively instructed to issue the complaint.

<sup>5/</sup> At the hearing Charging Parties expressed the intention (Continued)

the Board must evaluate the legal and factual merits disclosed by the administrative investigation to determine whether the allegations of violations in the complaint can be so clearly proved that no remedy, less than the maximum, can be accepted. In arriving at this decision, the discretion of the Board is recognized as broad. Textile Workers Union of America, AFL-CIO v. N.L.R.B. /294 F. 2d 738 (C.A.D.C.), enfd, after remand, 315 F. 2d 41.

See also Local 282, Int. Bro. of Teamsters, etc. v. N.L.R.B., 339 F. 2d 795, 799, (C.A. 2).

Weighing Charging Parties' objections to the proposed settlement stipulation in the light of the above-stated principles, I reject their objections.

1. The nonadmission clause

Charging Parties object to inclusion of the nonadmission (exculpatory) clause in the proposed settlement stipulation on two basic grounds: (a) General Counsel's own "Internal Instructions and Guidelines" (Section 10130.6) instructs his staff that such clause "not be routinely incorporated in either formal or informal settlement agreements" since it "reduces the effectiveness of the settlements by permitting the respondents to disavow responsibility

5/ (Continued)

to request the Board " for the right to examine all formal settlements taken in this Region /No. 29/ within the last 2 years" pursuant to the Freedom of Information Act (5 U.S.C. §552) in order to ascertain the standards followed by the Region in including or excluding nonadmission clauses in settlement agreements. On September 26, counsel for Charging Parties was informed by the Office of General Counsel in Washington (Continued)



for the conduct which in fact gave rise to the proceeding;" and (b) the Regional Director's inclusion of the clause was "arbitrary and capricious" since no discernible criterion or standard exists for inclusion or exclusion of a nonadmission clause. In support of their contention, Charging Parties state (Memo pp. 8-10) that their analysis of the 70 formal settlement agreements entered into in the 29th Region in the past 3 years (supra, fn. 5), shows that 57 contained nonadmission clauses while 13 did not, so that "inclusion of this language is the rule rather than the exception;" and that there is no evidence that the Regional Director has taken into account the gravity of the alleged violations or Respondent's propensity to commit violations in determining whether to include or exclude the exculpatory language.

To begin with, General Counsel, who has "final authority... in respect of the investigation of charges and issuance of complaints" (Sec. 3(d) of the Act), necessarily has broad discretion respecting settlements of unfair labor practice proceedings. See, e.g., Local 282, Teamsters, supra, 339 F. 2d at 799; Smith Company of California, Inc., 200 NLRB No. 106, fn. 2; Oil Chemical and Atomic Workers International Union, Local 1-591 (Snelson, Inc.), 208 NLRB No. 30. "The Board itself, has no power to enter into settlement negotiations... although it can and does review the terms of a proposed

5/ (Continued)

that their formal August 27 request to inspect formal settlements entered into by Region 29 in the last three years would be granted (Appendix E to C.P. Memorandum). Counsel thereafter examined the documents in question. (See C.P. Memo, p. 3)

settlement once a complaint has been issued..." Gimbel Brothers, Inc., 100 NLRB 870, 866. In making such review the Board is, of course, not bound by the General Counsel's instructions to his staff nor the criteria, if any, that he has established: Cf. N.L.R.B. v. Birdsall Construction Co., 487 F. 2d 288, 291-92 (C.A. 5). The Board's basic test for accepting a proffered settlement in any given situation is whether "the unfair labor practices assumed in the case are substantially remedied" and whether the settlement "would effectuate the policies of the Act." Robinson Freight Lines, 117 NLRB 1483, 1485, *enfd.* 251 F. 2d 639, 642 (C.A. 6) <sup>6/</sup>

As the Board has stated, "it is well established that inclusion in the settlement of a nonadmission clause is not a valid basis for objection where the settlement effectuates the policies of the Act." United Mine Workers of America (James Bros. Coal Co.), 191 NLRB 209. The inclusion of such clause may mean nothing more than a harmless means of permitting a respondent to save face -- without impairing the salutary statutory objective of amicably resolving disputes without resort to formal proceedings. Here, there is no showing that inclusion of the exculpatory language impairs the effective implementation of the Act. The order contained in the stipulation is a "broad" one -- requiring Respondent to cease and desist from coercing not only Charging Parties' employees but also those of "any other employer" and not only through the act and conduct alleged but also "in any other manner"

<sup>6/</sup> See also, United Steelworkers of America (Poloron Products of Mississippi, Inc.), 187 NLRB 343, *enfd.* 450 F. 2d 793 (C.A. 5); United Mine Workers of America (James Bros. Coal Co.), 191 NLRB 209



violative of Section 7 of the Act. Presence of the nonadmission clause is of little legal import in view of Respondent's consent to enforcement of the proposed Board order by court decree. Respondent is subject to judicial contempt citation in the event it violates the decree (i.e., repetition of the proscribed unlawful conduct) despite the exculpatory language in the settlement agreement. "A decree rendered by consent is always affirmed without considering the merit of the cause." *N.L.R.B. v. Ochoa Fertilizer Corp.*, 368 U.S. 318, 322-23, quoting from *Nashville, Chattanooga & St. Louis R. Co. v. U.S.*, 113 U.S. 261, 266. See also *N.L.R.B. v. Oil, Chemical, and Atomic Workers, etc.* (*Catalytic Industrial Maintenance Co.*), 476 F. 2d 1031, 1037 (C.A. 1)

Charging Parties' objection to the nonadmission clause apparently stems more from concern about their employees' ability to successfully conclude civil damage suits than from apprehension about effective implementation of the National Labor Relations Act -- the latter being a concern a concern and responsibility of the Board and General Counsel rather than the Charging Parties. Thus, Charging Parties contended at the hearing (transcript, pp. 26-28) that absent a Board determination on the basis of a factual record, the Board order entered against Respondent would not be "res judicata" on the issue of the Union's liability in civil damage suits that may be instituted in state courts by affected employees (i.e., those coerced not to work during the strike). Although there is no evidence that any such suits have been filed, <sup>7/</sup> "there is no requirement

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<sup>7/</sup> At the hearing Respondent's counsel only alleged that he knew  
(Continued)

that the Board, or for that matter the taxpayers of this nation, provide such services free of charge upon request of private litigants." Concrete Materials of Georgia, Inc. v. N.L.R.B., 440 F. 2d 61, 68 (C.A. 5).

For all of the foregoing reasons, I conclude that Charging Parties' objections to inclusion of the nonadmission clause in the proposed settlement agreement are lacking in merit and constitute no basis for rejecting the settlement. <sup>8/</sup>

## 2. The backpay issue

Charging Parties contend that the settlement agreement should provide a backpay remedy since but for the threats and other coercion directed against the four employees they "would have resigned from the Union and would have returned to work" and earned "nine to ten weeks of wages during the period of the strike" (transcript p. 29). To begin with, it should be observed that insofar as Charging Party Gleason is concerned, Judge Herman in the preceding case (supra, fn. 3) found that Gleason had told its employees that they could not return to work unless they first resigned from the Union -- a precondition he found to be unlawful; and if this finding is sustained, the Gleason employees will be entitled to recover from Gleason the backpay Charging Parties now seek to obtain from the Union. Be that as it may, however, it is settled Board policy not to award backpay in cases of this type -- even in more flagrant circumstances than here presented, such as where employees

<sup>7/</sup> (Continued)

of one employee "sueing the Union," but this related to alleged Union refusal "to pay him strike fund assistance which was uniformly paid during the strike."

<sup>8/</sup> Noted in this connection is General Counsel's unchallenged (Continued)



are precluded from working as a result of unfair labor practices involving violence such as assault and battery. See, e.g., Pacific Maritime Association, 192 NLRB 338, 352; Int. Union of Operating Engineers, Local 153 (Long Construction Co.), 145 NLRB 554, 555-56.

In point is the Board's recent Lock Joint decision.<sup>9/</sup> There the union reinforced its demand to employees to refrain from working during the strike with threats of bodily injury and violence (e.g., damage to an employee's automobile). As a result, employees refrained from working and lost wages. In rejecting the Administrative Law Judge's recommended backpay order, the Board majority stated that it was adhering to its prior decisions (which "have stood the test of 24 years of court litigation and Congressional scrutiny") against providing such remedy in cases of this type. It noted, inter alia, that other remedies exist to deter such union conduct, including private suits by employees for damages in State court for tortious union conduct; a Board cease-and-desist order and injunction action against the union under Section 10 (j) of the Act, implemented by contempt proceedings; and withholding issuance of an otherwise appropriate bargaining order for the benefit of the offending union. Respondent's contention in its Memorandum (p. 12) that the instant case is distinguishable from Lock Joint

<sup>8/</sup> (Continued)

assertion at the hearing (transcript p. 82) that Charging Party Gleason, one of the Respondents in the "lockout" case previously referred to (supra, fn. 3), was offered (but refused) a like formal settlement with a nonadmission clause.

<sup>9/</sup> Union de Tronquistas de Puerto Rico, Local 901, etc. (Lock Joint Pipe & Co. of Puerto Rico), 202 NLRB No. 43 (82 LRRM 1525).

in that here "the alleged violations do not involve picketline violence" but only threats of union fines and sanctions is without substance; if anything, this case, which involves less serious union misconduct, is an a fortiori case for withholding the backpay remedy under the Lock Joint doctrine.

Also in point is the recent decision of the First Circuit Court of Appeals in *N.L.R.B. v. Oil Chemical and Atomic Workers (Catalytic Industrial Maintenance Co.)* 476 F. 2d 1031. There, as here, the Charging Party employer objected to a settlement agreement without a backpay order against a union which "prevented" employees from working during a strike. In upholding the Board's rejection of the Charging Party's objection, the Court took note of the Board's "long-standing policy against such awards in this type of case," characterizing the employer's request for backpay as an "unusual remedy." 476 F. 2d at 1037.

In any event, irrespective of the merit in Respondent's contention (also stressed by the dissenting Board members in *Lock Joint*, *supra*) that no valid reason appears why the Board should withhold the backpay remedy against unions while applying it to employers who illegally deprive employees of work, I am bound by the Board's majority decision against awarding such remedy against unions in situations like those here present. Cf. Inter. Bro. of Electrical Workers, Local 309 (R. Dron Electrical Co., Inc.), 212 NLRB No. 59 (J.D. p. 18). I conclude that since the backpay remedy which Charging Parties here seek to include in the settlement stipulation is one which the Board has refused to grant even in fully litigated cases, the absence of that remedy here does not warrant disapproval of the settlement agreement.



### 3. Other issues

At the hearing, Charging Parties advanced two additional objections to the proposed settlement agreement which they now apparently abandon since not urged in their Memorandum of Law. In any event, however, those two objections to the settlement were and are too tenuous to warrant extended discussion. The contention (transcript pp. 36-37) that paragraph (a) of Section 1 of the proposed order should eliminate the "except" clause -- i.e., that the Union cease and desist from engaging in the prohibited conduct (threatening employees with fines if they resigned, etc.) "except insofar as Respondent is entitled to inform employees of their obligations pursuant to a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act" -- flies in the face of standard Board language in orders of this type, based upon the statutory language, designed to preserve to unions the right to enforce union-security clauses as expressly authorized by the Act.'

The other contention (transcript pp. 38-41) that the words "at any time" be inserted in paragraphs (b) and (c) of Section 1 of the proposed order to make it plain to employees that they have the right to resign "not just during a strike or lockout" is, as Charging Parties conceded, only suggested clarifying language. Paragraph (c) of Section 1 adequately satisfies Charging Parties' solicitude for its employees since it proscribes the Union's informing employees that it will not accept resignations (and from threatening them with reprisals if they resign or attempt to resign) without limitation as to time (subject,

of course, to the Union's statutory right to require membership under a valid union security agreement). While, as is contended, "there is no harm in putting" in the requested language, neither is there necessity therefore.

For all of the foregoing reasons, I conclude that Charging Parties' objections, individually and collectively, are insufficient to justify rejection of the proposed settlement agreement entered into by General Counsel and Respondent; that the proposed order incorporated therein would adequately remedy the violations alleged in the complaint and, indeed, is substantially identical to that the Board would have issued had all the alleged violations been established in a fully litigated proceeding; and that it will effectuate the policies and purposes of the Act to adopt the terms of the settlement agreement.

#### ORDER

Charging Parties' objections to the proposed settlement agreement are hereby overruled and General Counsel's application for approval thereof is hereby granted. <sup>10/</sup>

/s/ Samuel M. Singer  
Administrative Law Judge

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<sup>10/</sup> The attention of the parties is directed to Section 102.27 of the Board's Rules and Regulations, under which any review of this Order is required to be sought within 10-days.



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[Dated 1/21/75]

## DECISION AND ORDER

### Statement of the Cases

On August 27, 1974, Local 100, Service Employees International Union, AFL-CIO, herein called Respondent, and the General Counsel of the National Labor Relations Board entered into a Stipulation, in settlement of the cases, subject to approval of the Board, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Rules and Regulations of the Board, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The aforesaid Stipulation is hereby approved and made a part of the record herein, and we shall enter a Decision and Order pursuant to the provisions of the said Stipulation.<sup>1/</sup>

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<sup>1/</sup> On August 27, 1974, a hearing in the above-entitled proceeding was held before Administrative Law Judge Samuel M. Singer of the National Labor Relations Board. At the outset of the hearing, counsel for the General Counsel moved for approval  
(Continued)

Upon the basis of the aforesaid Stipulation and the entire record in the proceeding, the Board makes the following:

Findings of Fact

1. The business of the Employees

Garlick, is and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of New York, Garlick maintains its principal office and place of business at 1700 Coney Island Avenue, Brooklyn, in the City and State of New York and various other places of business in the New York metropolitan area where it is and has been at all times material herein engaged in providing funeral services and related services.

During the past year, which period is representative of its annual operations generally, Garlick, in the course and conduct of its business operations, derived gross revenues therefrom in excess of \$500,000, and purchased and caused to be transported and delivered to its places of business, coffins, urns, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its places of business in interstate commerce directly from states of the United States other than the state in which it is located.

1/ (Continued)

of the Stipulation. The Charging Parties, J.N. Garlick Funeral Homes, Inc., herein called Garlick and Martin A. Gleason, Inc., herein called Gleason, objected to the Stipulation.

On October 31, 1974, the Administrative Law Judge issued the attached Decision, overruling the Charging Parties' objections, and granting the General Counsel's motion for approval of the Stipulation. On the same date, the proceeding was transferred to and continued before the Board. Thereafter, the Charging  
(Continued)



Gleason, is and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of New York, Gleason maintains its principal office and place of business at 149-20 Northern Boulevard, Flushing, in the City and State of New York where it is and has been at all times material herein engaged in providing funeral services and related services.

During this past year, which period is representative of its annual operations generally, Gleason, in the course and conduct of its operations, derived gross revenues therefrom in excess of \$500,000, and purchased and caused to be transported and delivered to its place of business, coffins, urns, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in interstate commerce directly from states of the United States other than the state in which it is located.

The Respondent admits, and we find, that Garlick and Gleason are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The labor organization involved

1/ (Continued)

Parties filed exception and a supporting memorandum.

We have considered the Stipulation in light of the record, the attached Decision, and the exceptions and memorandum and, for the reasons set forth by the Administrative Law Judge, are of the opinion that the Charging Parties' objections are without merit, and that it would effectuate the policies of the Act to approve the Stipulation. Accordingly, the Charging Parties' objections are overruled.

Local 100, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### ORDER

Upon the basis of the above findings of fact, the Stipulation, and the entire record in the proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

The Respondent, Local 100, Service Employees International Union, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Stating to employees of H.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc., or any other employer, that Local 100 will not accept resignations, or threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100, except insofar as Respondent is entitled to inform employees of their obligations pursuant to a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosures Act of 1959.

(b) Threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and fail to refuse to do picket line duty at the premises of J.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc., or any other employer.



(c) Threatening employees with fines or other penalties if said employees resign, tender resignations or seek to resign from Local 100 and return to work during a concerted work stoppage or lockout.

(d) In any other manner, coercing or restraining employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which the National Labor Relations Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(a) Post in conspicuous places at its office at 549 Broadway, Massapequa, New York, copies of the attached Notice to Members. <sup>2/</sup> Copies of the said Notices, on forms provided by the Regional Director for Region 29, shall, after being signed by Respondent's representative, be posted immediately upon receipt thereof, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said Notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29, signed copies of said Notice for posting by Garlick and Gleason, if they are willing, at places where they customarily post notices to their employees.

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<sup>2/</sup> In the event the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D. C., January 21, 1975.

Howard Jenkins, Jr., Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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MEMBER KENNEDY, dissenting:

I do not approve the Stipulation in this proceeding for the reasons stated in my dissent in Union de Tronquistas de Puerto Rico, Local 901, etc. (Lock Joint Pipe & Co. of Puerto Rico), 202 NLRB 399.

Dated, Washington, D. C. January 21, 1975

Ralph E. Kennedy, Member

NATIONAL LABOR RELATIONS BOARD

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## APPENDIX

## NOTICE TO MEMBERS

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

WE WILL NOT state to employees of J.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc., or any other employer, that we will not accept resignations, or threaten employees with fines or other penalties if said employees resign, tender resignations or seek to resign from our union, except insofar as we are entitled to inform employees of their obligations pursuant to a valid agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosures Act of 1959.

WE WILL NOT threaten employees with fines or other penalties if said employees resign, tender resignations or seek to resign from our union and fail or refuse to do picket line duty at the premises of J.N. Garlick Funeral Homes, Inc., Martin A. Gleason, Inc., or any other employer.

WE WILL NOT threaten employees with fines or other penalties if said employees resign, tender resignations or seek to resign from our union and return to work during a concerted work stoppage or lockout.

WE WILL NOT in any other manner, coerce or restrain employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

**THIS IS AN OFFICIAL NOTICE  
AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's office, 16 Court Street, Brooklyn, New York 11241, Telephone 212-596-5388. 3535.

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